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CRIMINAL LAWS 63 AND 64 OF CZECHOSLOVAKIA

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Ceskoslovenske [Code of Laws  
of the Czechoslovak Republic],  
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Pages 187-266

Unsigned

## LAW NO CO 3

Act of 19 December 1956 amending and complementing Criminal  
Law No 86/1950 of the Code of Laws.

The National Assembly of the Czechoslovak Republic has  
enacted the following law:

Section I

The penalty of life imprisonment prescribed by the Criminal  
Code is abrogated and a penalty of confinement for 25 years shall  
be substituted therefor.

Section II

Where the special part of the Criminal Code prescribes the  
death penalty as the sole punishment, a penalty of confinement for  
25 years shall be included as an additional authorized punishment.

Section III

All provisions of the special part of the Criminal Code  
stating that

- (a) Suspension of sentence is prohibited,
- (b) Reduction of sentence is prohibited,
- (c) Fines are mandatory,

(d) Deprivation of property is mandatory,

(e) Deprivation of citizenship may be imposed,

are abrogated, as are any provisions of the general part of the Criminal Code which refer to the provisions of (a) and (b) above.

#### Section IV

The general part of the Criminal Code is further amended as follows:

1. Article 14, Paragraph 2, delete the words "assembly against the republic (Articles 79 and 80), sabotage under Article 84" and substitute "subversion of the republic (Article 79a), terrorism (Article 80a), raids (Article 84), sabotage (Article 85); delete the words "murder of an official (Article 105 and 106), conspiracy to assault an official (Article 107), assault against an official (Article 108), usurpation of official authority (Article 109);" insert the words "and procurement (Article 243a)" following the words "traffic in women."

2. Article 17 shall be followed by Article 17a which shall read, including the title, as follows:

#### Article 17a. Remission of Punishment

"The court may forego punishment if the offense is of a minor character and the offender otherwise conducts himself as a proper working man; if punishment is remitted the offender shall be considered acquitted."

3. Delete clause (a), Paragraph 2, Article 18.

4. Article 19, Paragraph 1, is amended to read:

"(1) In imposing punishment the court shall take into consideration the degree of the threat to society, especially as regards the manner in which the offense is committed, the consequences of the offense, the degree of guilt, the personality of the offender, the possibility of the offender's rehabilitation, and all aggravating and/or mitigating circumstances."

5. Article 21, clause (a) substitute the words "impaired sanity" for "near insanity."

6. Paragraphs 2 through 4 of Article 22 are amended to read:

"(2) In sentencing an offender for an offense committed prior to the announcement of a sentence for another offense in a court of primary jurisdiction, the court shall impose additional punishment which together with the prior sentence shall not exceed the aggregate punishment provided in Paragraph 1. No additional punishment shall be imposed if the court considers the previously imposed sentence sufficient; in such case suspension of sentence shall be reconsidered (Article 26).

"(3) If the prior sentence imposed a corrective measure and the court imposing the supplementary punishment does not impose additional corrective measures, the original corrective measure shall be set aside and an appropriate aggregate punishment in accordance with the provisions of Paragraph 1 shall be imposed.

"(4) The provisions regarding supplementary punishment shall not apply if a previous trial resulted in acquittal of the accused."

7. Article 24, Paragraph 1, is amended to read:



"(1) The court shall impose a suspended sentence not to exceed 2 years of confinement if the court is of the opinion that in view of the prior behavior of the offender and circumstances of the case the purpose of the punishment will be attained without the execution of the sentence."

8. Article 25, first sentence of Paragraph 1, is amended to read:

"In imposing a suspended sentence the court shall establish a probationary period of one to 3 years; however, if the suspended sentence imposed confinement exceeding one year, the probationary period shall be 2 to 5 years."

Article 25 is further amended to include the following Paragraph 3:

"(3) The time of probation during which the probationer has lived a proper life as a working man and complied with the stipulations imposed shall be counted in computing a newly established probationary period for same offense or probationary period under the provisions of Article 26."

9. Article 27, Paragraph 1, is amended to include the following last sentence:

"Upon determining that the probation has been satisfactory the court shall also decide if the remainder of punishment pertaining to activity and residence restrictions shall be executed; substitute punishment of confinement in lieu of unobtainable pecuniary fines shall not be imposed in such cases."

10. Paragraphs 2 and 4 of Article 29 are abrogated.

Paragraph 3 is amended by deleting the first and second sentence following the colon and changing the number of the paragraph from 3 to 2.

11. Article 30, Paragraph 1, substitute the words "degree of danger to society inherent in the offense" in place of "importance of mitigating circumstances."

12. Article 31 is amended to include the following Paragraph 2:

"(2) If a sentence of confinement has been imposed for an offense committed prior to the imposition of another penalty of confinement, the latter, together with such prior punishment, or if such prior punishment has been partially executed, together with the balance remaining thereof, exceed 25 years."

13. Article 36, including the title, is abrogated.

14. Article 37 is amended to read:

"(1) In lieu of confinement not to exceed 6 months the court shall impose corrective measures of one month to one year's duration when considered adequate to satisfy the purpose of punishment for the offense.

"(2) Such corrective measures shall not be imposed upon:

"(a) Military personnel on active duty

"(b) Members of militarized organizations and other units who according to special laws are subject to the law governing military offenses while on active duty

"(c) V(c) Prisoners of war,

"(d) Under any other conditions which could prevent execution of such punishment."

15. Article 42, including the title, is abrogated.

16. Article 43 is amended to read:

"The court shall impose deprivation of citizenship rights if the offender is sentenced to death. When warranted by the severity of the offense or the baseness of the motive, the court may also impose deprivation of citizenship rights upon persons convicted of premeditated offenses and sentenced to confinement exceeding 2 years."

17. Article 44 is amended to read:

"(1) Deprivation of citizenship rights shall consist of the loss of

"(a) Right to vote

"(b) Right to serve as a judge or people's assessor

"(c) Scientific and artistic honors,

"(d) Czechoslovak awards and commendations, the right to wear foreign decorations, and the right to use foreign honorary titles.

"(2) The court may impose deprivation of all the rights cited in Paragraph 1 or any portion thereof.

"(3) Deprivation of the rights cited in Paragraph 1 under (a) and (b) shall be effective for the period of confinement

or until an amnesty is granted on the statute of limitations runs; the court may, however, rule that the deprivation of rights shall remain in effect after release from confinement for a period not to exceed 5 years. Deprivation of the rights cited under (c) and (d) above is always permanent."

18. Paragraphs 1 through 3 of Article 46 are amended to read:

"(1) The court shall impose deprivation of military rank if a sentence includes dismissal from service.

"(2) When warranted by the gravity of the offense and the baseness of the motive, the court may impose deprivation of military rank upon persons convicted of premeditated offenses and sentenced to confinement exceeding 2 years.

"(3) Military courts and the Military Collegium of the Supreme Court may also impose deprivation of military rank when deemed in view of the offense to be in the interests of the service."

The designation of the current Paragraph 2 is changed to Paragraph 4.

19. Paragraphs 1 through 3 of Article 47 are amended to read:

"(1) When warranted by the nature and gravity of the offense and the circumstances of the offender, the court may impose deprivation of property, if the death penalty or confinement exceeding 2 years for a premeditated offense have been imposed.

"(2) Deprivation of property shall affect either all the property or a portion thereof, as determined by the court; deprivation of property shall not, however, apply to property required to satisfy the basic needs of the offender or persons for whose care he is legally responsible.

"(3) Decisions regarding deprivation of property are legally determinative of property ownership."

The designation of the current Paragraph 3 is changed to Paragraph 4.

20. Article 48, Paragraph 1, is amended to read:

"(1) In addition to a sentence of confinement the court may also impose a pecuniary fine, if through his offense the offender has demonstrated hostility towards the people's democratic order or if the offense is committed for financial gain. A fine shall not be imposed when not obtainable. A fine shall not be imposed in addition to deprivation of property."

Article 48, Paragraph 2, second sentence is amended to read; "Fines shall be in amounts from 100 crowns to 50,000 crowns."

21. Paragraphs 1 and 2 of Article 51 are amended by deleting the words "temporarily or permanently" and Paragraph 2, clause (c) in its entirety.

Article 51, Paragraph 3, the sentence preceding the colon is amended to read; "The prohibition cited in Paragraphs 1 and 2 shall be determined by the court for a period of one to 10 years."

22. Article 53 is amended by deleting the words "temporarily or permanently."

Article 53 is further amended to include the following Paragraph 2:

"(2) The restrictions cited in Paragraph 1 shall be determined by the court for 3 to 10 years; time in confinement shall not be counted into this period."

23. Article 55, Paragraph 1, substitute the words "may announce" for "generally announces."

24. Article 58 is amended to read:

"The court may also remit punishment of minors if

"(a) For excusable reasons the minor is unable fully to recognize the harm of his action against society

"(b) The offense is minor

"(c) The court considers the simultaneous rehabilitative education adequate to satisfy the purpose of the punishment."

25. Article 59 is amended by deleting clause (b)

26. Article 61, Paragraph 1, is amended to read:

"(1) In the case of minors, the court may suspend sentences of confinement not exceeding 3 years. Probation shall be determined for periods of one to 3 years."

27. Article 64, Paragraph 1, delete the words "assembly against the republic (Article 79 and 80), sabotage (Articles 84 and 85)" and substitute the words "subversive activity against the republic (Article 79a), terrorism (Article 80a), raids (Article 84), sabotage (Article 85); further delete the words "conspiracy to assault an official (Article 107), threat to the unified economic plan under Article 105.)

28. Insert Article 64a to follow Article 64:

"Article 64a Termination of Danger to Society Inherent in  
The Action

"The punishability of the action is terminated if the danger to society inherent in the action has been terminated."

29. Article 69, Paragraph 1, clauses (a) through (c) are amended to read:

"(a) Ten years, if sentence of confinement exceeds 5 years,

"(b) Five years, if sentence of confinement exceeds one year,

"(c) Three years, if sentence of confinement does not exceed one year."

30. Article 68, Paragraph 1, is amended to include the words "and the remainder of the punishment pertaining to the activity and residence restrictions is not executed."

31. Article 70, Paragraph 1, sentence following the colon is amended to read: "the court may so rule if the offender committed the offense in a state of impaired sanity and his remaining at large represents danger to society, or if the offense has been committed by a habitual drinker of intoxicating beverages or a narcotics addict in a state of drunkenness or other intoxication, or if the offender was guilty of drunkenness."

32. Article 73, Paragraph 1, sentence following the colon is amended to read: "if in the interest of the war, may be extended until he reaches 19 years of age."

33. Article 74, Paragraph 1, substitute the words "the court may pronounce" for "the court will generally pronounce."

34. Article 76, Paragraph 3, is amended by deleting clause (c), and Paragraph 4 is amended by inserting the word "habitual" before the word "commission."

#### Section V

The special part of the criminal law is amended and supplemented as follows:

1. Paragraphs 1 and 2 of Article 78, are amended to read:

"(1) Whoever, by an especially dangerous act, attempts to destroy the independence of the republic, destroy or disrupt its people's democratic system or social order, destroy the achievements of the working people in the construction of socialism, or destroy or disrupt the territorial unity of the republic or undermine its defense shall be punished by confinement for 10 to 25 years.

"(2) Whoever, in order to commit the offense mentioned in Paragraph 1,

"(a) Conspires with another person, or

"(b) Enters into contact with a foreign power or foreign official shall be punished by confinement for 5 to 20 years."

Article 78, Paragraph 3, clause (b), is amended to read:

"(b) If through such action the independence of the republic, its people's democratic system, the achievements of the



working people in the construction of socialism, or the territorial unit or the defensive capacity of the republic are threatened to a large extent,"

Article 78 is further amended by deleting Paragraph 3, clause (c); the designation of the current Paragraph 3, clauses (d), (e), and (f) are changed to clauses (c), (d), and (e).

2. Articles 79 and 80 including the titles are abrogated.

3. Insert the following as Article 79a to follow Article 78:

"Article 79a. Subversive Activity Against the Republic

"(1) Whoever, because of hostile attitude towards the people's democratic order, engages in subversive activities against the independence of the republic, its people's democratic system or social order, the achievements of the working people in the construction of socialism, or the territorial unity or defensive capacity of the republic shall be sentenced to confinement for one to 5 years.

"(2) The same sentence shall be imposed upon any person who

"(a) Forms an organization with the intent to commit the offense mentioned in Paragraph 1, or

"(b) In order to commit such an offense conspires with a foreign power or foreign official or enters into contact with them for the purpose of committing such an offense.

"(3) The offender shall be sentenced to confinement for 3 to 10 years, if

(a) The offense mentioned in Paragraph 1 and 2 is committed at a time of national emergency, or

(b) In the presence of any other aggravating circumstances.

"4. An offender who conspires with another person to commit the offense mentioned in Paragraphs 1 through 3 shall be sentenced to confinement for 3 months to 3 years."

4. Insert the following as Article 80a to follow Article 79a:

"Article 80a. Terrorism

"(1) Whoever with intent to deter a person from active participation in the construction of the people's democratic republic or to prevent his participation in such activity, injures the health of a person or causes considerable loss of property, or any other serious damage, or makes an attempt to do so, shall be sentenced to confinement for 3 to 10 years.

"(2) Confinement for 5 to 20 years shall be imposed, if

"(a) The offender commits the offense mentioned in Paragraph 1 as a member of a group,

"(b) The offense results in extensive damage to property,

"(c) The offense is committed with intent to cause serious injury to health,

"(d) The offense results in serious injury to health,

or

"(e) In the presence of any other especially aggravating circumstances.

"(3) Confinement to 25 years of the death penalty shall be imposed if

"(a) The offender commits the offense mentioned in Paragraph 1 with intent to kill, or

"(b) The offense endangers the lives of many people or causes death.

"(4) Whoever conspires with another person to commit the offense mentioned in Paragraphs 1 or 2 shall be sentenced to confinement for one to 5 years; in case of conspiracy to commit the offense cited in Paragraph 3, confinement for 3 to 5 years shall be adjudged.

"(5) Whoever, with the intent to deter a person from active participation in the construction of the people's democratic republic or to prevent his participation in such activity, threatens him with death or killing of a person near to him, injury to health, considerable damage to property, or any other serious damage shall be sentenced to confinement for 6 months to 5 years."

5. Article 81, Paragraph 1, is amended to read:

"(1) Whoever, because of hostile attitude towards the people's democratic order,

"(a) Publicly or at least in the presence of 2 persons incites against the republic, its independence, the people's democratic system, the achievements of working people in the construction of socialism, or the territorial unity or defensive capacity of the republic, or

"(b) Intentionally procures or aids the dissemination of inflammatory communications,  
"shall be sentenced to confinement for 3 months to 3 years."

The title of the article shall be placed beneath the numerical designation of the article.

6. Article 82 is abrogated.

7. Article 84, including the title, is amended to read as follows:

"Article 84. Disruptive Actions

"(1) Whoever, because of hostile attitude against the people's democratic order, destroys, damages, or renders unusable any property under socialist ownership with the intent to obstruct or disrupt

"(a) The operation or expansion of a national enterprise, cooperative, or any other organization of the socialist sector, or

"(b) The operation of an important public institution,  
"shall be sentenced to confinement for 5 to 20 years.

"(2) Confinement for 25 years or the death penalty shall be imposed, if

"(a) The offense mentioned in Paragraph 1 prevents or to a considerable degree disrupts the execution and fulfillment of the state plan for the development of national economy in an especially important sector.

"(b) The offense endangers to a large extent the defensive capacity of the country,

"(c) The offense endangers the lives of many people or causes death, or

"(d) In the presence of any other especially aggravating circumstances.

"(3) Whoever conspires with another person to commit the offenses mentioned in Paragraphs 1 or 2 shall be sentenced to confinement for 3 to 10 years."

8. Article 85, including the title, is amended to read:

"Article 85. Sabotage

"(1) Whoever, because of hostile attitude towards the people's democratic order, fails to fulfill or violates the duties of his office, occupation, or profession, evades fulfillment of such duties, or is guilty of any other action with intent to

"(a) Prevent or hinder the execution or fulfillment of a state plan for the development of national economy in any sector,  
or

"(b) Cause serious disruption of the activities of an office or public authority, national enterprise, cooperative, or any other organization of the socialist sector,

"shall be sentenced to confinement for 3 to 10 years.

"(2) Confinement for 10 to 20 years shall be imposed if

"(a) The offense mentioned in Paragraph 1 results in serious difficulties to the execution or fulfillment of the state

plan for the development of the national economy in an especially important sector,

"(b) The activity of the office or public authority, national enterprise, cooperative, or any other organization of the socialist sector is seriously impaired, or

"(c) In the presence of any other especially aggravating circumstances.

"(3) Confinement for 25 years or the death penalty shall be imposed if

"(a) The offense mentioned in Paragraph 1 considerably damages vital defense interests of the country,

"(b) The offense prevents execution of fulfillment of the state plan for the development of national economy in an especially important sector, or

"(c) The offense endangers the lives of many people or causes death."

9. Article 86, Paragraph 1, delete the final words "or life imprisonment."

Paragraphs 2 and 3 of Article 86 are amended to read:

"(2) Confinement for 25 years or the death penalty shall be imposed if

"(a) The offense mentioned in Paragraph 1 is committed during a time of national emergency,

"(b) The offender commits the offense as a member of an organization set up for the purpose of obtaining state secrets,

"(c) The offense pertains to state secrets of high importance,

"(d) The offense is committed in an especially dangerous manner, on large scale, or to obtain steady monetary gain and has been carried out for a considerable period of time,

"(e) In the presence of any other especially aggravating circumstances.

"(3) Whoever, in order to commit the offense mentioned in Paragraphs 1 or 2

"(a) Associates with another person,

"(b) Enters into contact with a foreign power or a foreign representative,

"(c) Enters into contact with an organization set up for the purpose of obtaining state secrets with intent to aid their efforts,

"shall be sentenced to confinement for 5 to 15 years."

10. Article 88, Paragraph 2, is amended to read:

"(2) Confinement for 3 to 10 years shall be imposed, if

"(a) The offense cited in Paragraph 1 is committed during a time of national emergency,

"(b) The offense pertains to state secrets of high importance,

"(c) The offender betrays a state secret expressly entrusted to him or which by the virtue of his office he is responsible to safeguard, or

"(d) In the presence of any other especially aggravating circumstances.

11. Article 91 is abrogated.

12. Article 92 is amended to include the following Paragraph 2:

"(2) The same punishment shall be imposed if the offender with stealth and under false pretenses gains entry into an important defense establishment or any other similar area."

13. Insert the following Article 95a to follow Article 95:

"Article 95a. Illegal Entry of the Territory of the Republic

"Any person who, although not a Czechoslovak citizen, illegally enters the territory of the Czechoslovak Republic, shall be sentenced to confinement for 3 months to 3 years."

14. Article 96 including the title is amended to read:

"Article 96. Damaging the Interests of the Republic Abroad

"Any Czechoslovak citizen who intentionally damages the interests of the republic through dissemination of untrue reports about conditions in the republic shall be sentenced to a period of confinement not to exceed 3 years."

15. Articles 97 and 98 including the titles are abrogated.

16. Article 99, Paragraph 1, is amended by deleting the final words "or life imprisonment."



17. Articles 104 through 109 including the titles are abrogated.

18. Article 116, Table of Punishment, is amended as follows:  
Paragraph 1: punishment to be imposed 3 months to 3 years;  
Paragraph 3: punishment to be imposed one year to 5 years.

19. Article 119 is amended by deleting the minimum limitation of punishment.

20. Article 118 is abrogated.

21. Article 120, Paragraph 1, is amended by deleting the minimum limitation of punishment.

22. Article 123, Paragraph 2, is abrogated.

23. Article 127 is amended to read:

"Any person who causes a threat of serious disturbance in any sector of the population at any location by disseminating false alarming reports shall be sentenced to confinement not to exceed 6 months."

24. Insert the following Article 127a to follow Article 127:

"Article 127a.

"Any person who during a time of national emergency causes, even through negligence, serious unrest in any sector of the population at any location through disseminating alarming reports shall be sentenced to confinement for one to 5 years."

25. Articles 128, 129, and 134 including the titles are abrogated.

26. Insert under the title of Part II the following Article 124a, including the title:

"Article 124a. Speculation

"(1) Any person who, with intent to gain unauthorized profits for himself or another person, speculates with consumer commodities, especially if he hoards or stores such commodities in large quantities, shall be sentenced to confinement not to exceed 3 years.

"(2) Confinement for 3 to 10 years shall be imposed, if

"(a) The offender commits the offense mentioned in Paragraph 1 as a member of a group established for that purpose,

"(b) The offender has a record of previous convictions for same offense,

"(c) In the presence of any other especially aggravating circumstances.

"(3) Confinement for 10 to 20 years shall be imposed, if

"(a) The offender through the offense mentioned in Paragraph 1 caused a serious disruption of supply, or

"(b) The offense presents a serious threat of disruption in the supply of a large segment of the population."

27. Article 135 including the title is amended to read:

"Article 135. Obstruction of Operations

"(1) Any person who, even through negligence, obstructs or hinders the operation or expansion of a national enterprise,

cooperative, or any other organization of the socialist sector, especially by not fulfilling or improperly discharging the duties of his position, vocation, or profession, or evades fulfillment of such duties, shall be sentenced to confinement not to exceed one year.

"(2) Confinement for 6 months to 3 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 causes serious damage to the operation of a national enterprise, cooperative, or any other organization of the socialist sector, or

"(b) the offense causes any other serious damage."

28. Article 136, title is amended to read "Failure to Fulfill Obligations."

29. Article 139, Paragraph 3: punishment is established as 15 to 25 years.

30. Article 145, Paragraph 1, is amended to read:

"(1) Any person who intentionally causes considerable damage to the currency by acting contrary to the currency regulations shall be sentenced to confinement for one to 5 years."

31. Article 161, Paragraph 1, substitute the words "investigator, when discharging investigative duties in accordance with the Criminal Code; notary public when discharging the duties of the approving authority; or executive authority" for the words "decisive element."

32. Article 163, Paragraph 3, clause (a) substitute the words "disruptive actions (Article 84), sabotage (Article 85)" for the words "sabotage (Articles 84 and 85)."

33. Article 164, Paragraph 1, is amended to read:

"(1) Any person who intentionally fails to prevent treason (Article 78), terrorism (Article 80a), disruptive actions (Article 84), sabotage (Article 85), espionage (Article 86 and 87), wartime looting under the provisions of Article 99, counterfeiting or alteration of currency (Article 139), passing counterfeit or altered currency (Article 140), general danger as defined in Article 190, murder (Article 216), robbery (Article 232), desertion (Articles 273 and 274), mutiny (Article 276), violation of command duties (Articles 287 and 288) or undermining fighting spirit as defined in Articles 295 and 296 shall be sentenced to confinement not to exceed 5 years."

Article 164 is further amended to abrogate Paragraph 2.

The designation of the current Paragraph 3 is changed to Paragraph 2; the words "or Paragraph 2" are deleted; the words "disruptive actions, (Article 84), sabotage (Article 85)" are substituted for the words "sabotage (Articles 84 and 85)."

34. Article 165, Paragraph 1, is amended to read:

"(1) Any person who learns from reliable sources that a person plans to commit or has committed treason (Article 78), a subversive activity against the republic (Article 79a), terrorism (Article 80a), disruptive actions (Article 84), sabotage (Article 85), espionage (Article 86 and 87), threat to state secrets (Article 88), wartime looting under the provisions of Article 99, unlawful carrying of arms (Article 120 and 121), counterfeiting or alteration of currency (Article 139), passing of counterfeit or altered currency (Article 140), general danger as defined in Article 190, murder (Article 216), robbery (Article 232), theft of property

under socialist ownership as defined in Article 245, Paragraphs 3 and 4, damage to property under socialist ownership as defined in Article 245a, Paragraph 2a, desertion (Articles 273 and 274), mutiny (Article 276) and who intentionally fails to report such offense without delay to the prosecutor of the police shall be sentenced to confinement not to exceed 5 years."

Article 165, Paragraph 2, is further amended to substitute the words "disruptive actions (Article 84), sabotage (Article 85)" for the words "sabotage (Articles 84 and 85)."

35. Article 166, Paragraph 2, substitute the words "to be at least 3 years" for the words "to be at least one year."

Paragraphs 2 and 3 of Article 166 are further amended to alter the table of punishments. Paragraph 2: one to 3 years; Paragraph 3: 3 to 10 years.

36. Article 173 is amended to read:

"Any person who, with the intent to obstruct or hinder the execution of state supervision over the church or church organization, violates the provisions of the law pertaining to the economic support of church and church organization by the state shall be sentenced to confinement not to exceed 2 years."

The title of the article shall be placed beneath the designation Article 173.

37. Article 174 is abrogated.

38. Article 175, Paragraph 1, is amended to alter the minimum limitation of the punishment to 3 months.

Article 175, Paragraph 2, is amended to read:

"(2) Confinement for 3 to 10 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 results in serious disruption of an office or any other public activity, national enterprise, cooperative, or any other organization of the socialist sector, in which the offender is active or by which he is employed,

"(b) The offense threatens to undermine the confidence of working people in the impartiality or prestige of the office or any other public authority,

"(c) The offense causes any other serious damage, or

"(d) In the presence of any other especially aggravating circumstances."

39. Article 176, Paragraph 3, is abrogated.

40. Article 177, Paragraph 1, is amended by deleting the minimum limitation of punishment.

41. Article 187 is amended by deleting the minimum limitation of punishment.

42. Article 188 including the title is abrogated.

43. Insert the following Article 188a to follow Article 187:

"Article 188a. Vagrancy

"Any person who makes his living in an dishonest manner or evades honest work shall be sentenced to confinement for 3 months to 2 years."

Insert the following Article 188b to follow Article 188a:

"Article 188b. "Public Disturbance

"Any person who causes a public disturbance by a serious misdemeanor or any disturbance which manifests his apparent disdain of society shall be sentenced to confinement for 3 months to 2 years."

45. Article 190, Paragraph 3, clause (a), is amended to read:

"(a) If the offense mentioned in Paragraph 1 or 2 is committed against property under socialist ownership."

46. Article 196, Paragraph 2, clause (b), is amended to read:

"(b) If the offense is committed against property under socialist ownership, or"

47. Article 232, Paragraph 3, punishment is changed to 15 to 25 years.

48. Article 234, punishment is changed to 6 months to 2 years.

49. Article 238, Paragraph 3, and Article 239, Paragraph 3, punishment is changed to 15 to 25 years.

50. Insert the following Article 243a to follow Article 243:

"Article 243a. Procurement

"Any person who employs, forces, or seduces a person to prostitution, or who receives the gains from prostitution committed by another person shall be sentenced to confinement for 3 months to 3 years."

51. Article 245 including the title is amended to read:

"Article 245. Theft of Property Under Socialist Ownership

"(1) Any person who steals any property under socialist ownership

"(a) By taking such property into his possession with the intent to dispose of it as his own, or

"(b) Manages any item of such property entrusted to his care as his own property, or

"(c) On the basis of such property enriches himself or another unauthorized person,

"shall be sentenced to confinement for 3 months to 5 years.

"(2) Confinement for 3 to 10 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 is committed for profit,

"(b) The offense is committed by a member of group,

"(c) The offense is committed by a person who has a record of previous convictions with unsuspended confinement within the past 5 years for the same offense, or

"(d) In the presence of any other especially aggravating circumstances.

"(3) Confinement for 10 to 20 years shall be imposed, if the offender commits the offense mentioned in Paragraph 1 by malfeasance in his official duties and the offense causes considerable damage."



52. Insert the following Article 245a to follow Article 245:

"Article 245a. Damage to Property under Socialist Ownership

"(1) Any person who intentionally damages any property under socialist ownership by destroying such property, damaging it, or rendering it unusable shall be sentenced to confinement for 3 months to 3 years.

"(2) Confinement for 3 to 10 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 causes considerable damage, or

"(b) In the presence of any other especially aggravating circumstances."

53. Article 246 is amended to read:

"(1) Any person who through negligence causes any property under socialist ownership to be damaged, other than minor damage, shall be sentenced to confinement not to exceed one year.

"(2) Confinement for 6 months to 3 years shall be imposed if the offense mentioned in Paragraph 1 caused considerable damage."

54. Article 247 is amended by deleting Paragraph 2 clause (d); the designation of the current clause (e) is changed to clause (d).

55. Article 270, Paragraph 1, is amended by deleting the minimum limitation of punishment.

56. Paragraphs 2 and 3 of Article 275 are amended to read:

"(2) Confinement for 3 to 10 years shall be imposed, if the offense mentioned in Paragraph 1 is committed with intent to desert to a foreign country.

"(3) Confinement for 5 to 25 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 is committed during a time of war or in combat, or

"(b) If the offense is committed with intent to desert to the enemy."

57. Article 278 is amended to read:

"(1) Any person who refuses to obey, or through negligence fails to obey, an order of a commander shall be sentenced to confinement not to exceed one year.

"(2) Confinement for one to 10 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 has serious consequences, or

"(b) In the presence of any other especially aggravating circumstances.

"(3) Confinement for 25 years shall be imposed if the offender willfully commits the offense mentioned in Paragraph 1

"(a) In combat, or

"(b) In time of war in the presence of any of the circumstances mentioned in Paragraph 2."

58. Article 279, Paragraph 1, is amended by deleting the minimum limitation of punishment and establishing the maximum punishment as one year.

59. Article 281, Paragraph 2, and Article 282, Paragraph 2, are abrogated.

60. Article 285 is amended to read:

"(1) Any member of a guard or similar service, who, even through negligence, violates any regulation of such service or any special provisions published in accordance with the regulation of such service shall be sentenced to confinement not to exceed one year.

"(2) Confinement for one to 5 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 is committed while on guard duty of special national, economic, or military importance and endangers the mission of such service,

"(b) The offense results in serious consequences which the guard duty or other duties were established to prevent, or

"(c) In the presence of any other especially aggravating circumstances.

"(3) Confinement for 25 years or the death penalty shall be imposed if the offender commits the offense mentioned in Paragraph 1 willfully in time of war or in combat or under any of the circumstances mentioned in Paragraph 2."

61. Article 286, Paragraph 1, is amended by substituting the word "internal" for "this."

62. Insert the following Article 288a to follow Article 288:

"Article 288a

"(1) Any member of a command unit who fails to perform the duties inherent in his command function with the intent to inflict damage on another person or to provide unauthorized gains for himself or another person shall be sentenced to confinement not to exceed one year.

"(2) Confinement for 6 months to 5 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 endangers the defensive capacity or readiness of a unit, the fulfillment of an important mission, any property in the custody of the offender, or has any other serious consequence, or

"(b) Such offense is committed repeatedly.

"(3) Confinement for 2 to 10 years shall be imposed if the offense mentioned in Paragraph 1 is committed during time of war or in combat and has especially serious consequences."

63. Insert the following Article 288b to follow Article 288a:

"Article 288b

"(1) Any member of a command unit who, even through negligence, fails to fulfill the duties inherent to his command function and thus endangers the defensive capacity or readiness of a unit, the fulfillment of an important mission, property in his custody, or if his offense results in any other serious consequences shall be sentenced to confinement not to exceed one year.

"(2) Confinement for one to 5 years shall be imposed if the offense mentioned in Paragraph 1 is committed during time of war or in combat."

64. Article 289 including the title is abrogated. Article 290 is amended to include the title "Unauthorized Restriction of Subordinates."

65. Article 292 is amended to read:

"(1) Any person who allows any item of armament, clothing, or any other material received into his custody for the discharge of his duties or his personal use to be lost, pawned, destroyed, or damaged shall be sentenced to confinement not to exceed 5 years.

"(2) Confinement for 3 to 10 years shall be imposed, if

"(a) The offense mentioned in Paragraph 1 causes considerable damage, or

"(b) In the presence of any other especially aggravating circumstances.

"(3) Confinement for 25 years or the death penalty shall be imposed if the offense mentioned in Paragraph 1 is committed during time of war and has very serious consequences."

66. Insert the following Article 292a to follow Article 292:

"Article 292a

"Any person who allows any item of armament, clothing, or any other material received into his custody for the discharge of his duties or his personal use, through negligence, to be damaged, other than very minor damage, shall be sentenced to confinement not to exceed one year."

67. Articles 293, 297, 298, and 304 including titles are abrogated.

68. Article 305 is amended to read:

"If warranted by the circumstances in the case, disciplinary action may be taken for the offenses cited in Article 271, Paragraph 1; Article 272, Paragraphs 1 and 2; Article 278, Paragraph 1; Article 279, Paragraph 1; Articles 281 and 282; Article 283, Paragraph 1; Article 284, Paragraph 1; Article 285, Paragraph 1; Article 286, Paragraph 1; Article 288a, Paragraph 1; Article 288b, Paragraph 1; Articles 291, 292a, 302, and Article 303, Paragraph 1; and provided the damage is minor, also for the offense mentioned in Article 292, Paragraph 1."

#### Section VI

Sentences of life imprisonment pronounced prior to the effective date of this law shall be commuted to confinement for 25 years; the effective date of the sentence shall be the date of the lawful pronouncement of the sentence. If the sentence of life imprisonment has been imposed as a supplementary punishment, it shall be commuted so that the aggregate punishment is 20 years confinement.

#### Section VII

If an aggregate of several sentences of confinement imposed in a sequence or the remainder thereof on the date of their pronouncement by the court that decided the last case as a court of primary instance is in effect prior to the effective date of this law and exceeds a period of 25 years, it shall be commuted to confinement for 25 years.

Section VIII

1. Sentences of permanent restriction of activity imposed prior to the effective date of this law shall be commuted to restriction of activity for 10 years to run from the date of the pronouncement of the sentence.

2. Sentences of permanent restriction of residence imposed prior to the effective date of this law shall be commuted to restriction of residence for 10 years to run from the date of the pronouncement of the sentence.

Section IX

The Minister of Justice is hereby authorized to publish the full text of the criminal law in the Code of Laws as required by the supplemental provisions.

Section X

This law shall be effective as of 1 January 1957 and executed by all members of the government:

Signed:

Zapotocky

Fierlinger

Siroky

Dolansky

Tesla

Kopecky

Uher

Jankovcova, Engineer

Beran

Polacek

Jonas

Barak

Reitmajer

Simunek, Engineer

Dr Skoda

Dr Kysely	Bukal
Plojhar	Dvorak
Dr Slechta	Dr Kahuda
Bakula	Lieutenant General Lomsky
David	Dr. Neuman
Duris	Ouzky
Krajcir	Pospisil
Krosnar	Pucik, Engineer
Machacova	Dr Vlasak
Dr. Nejedly	Zatloukal

## LAW NO 64

Act of 19 December 1956 setting forth the rules of procedure for court proceeding.

The National Assembly of the Czechoslovak Republic has enacted the following law:

## PART 1. JOINT PROVISIONS

## CHAPTER 1. GENERAL PROVISIONS

Article 1. Purpose

(1) The purpose of this law is to establish procedures for criminal proceedings to ensure efficient detection of offenses and just punishment of offenders according to the law.

(2) All authorities responsible for criminal proceedings shall ensure speedy action in criminal offenses and fully safeguard all the rights guaranteed citizens by the constitution in order that the proceedings shall have a corrective effect upon the person against whom they are directed and provide a stimulus for vigilance



on the part of citizens against the enemies of the working class and other elements disruptive of constructive effort and heighten the awareness of the people of their civil responsibilities.

(3) It is the right and by this law, the duty of every citizen to assist the attainment of the above purposes.

Article 2. Basic Principles of Criminal Proceedings

(1) The prosecutor shall have the duty to prosecute any offense which has been brought to his attention; exceptions may be made only when authorized by the law.

(2) Court action shall be initiated only on the basis of a bill of charges filed by the prosecutor.

(3) Unless otherwise specified in this law, the authorities responsible for criminal proceedings shall act by virtue of their official function.

(4) Court decisions in criminal cases shall be generally determined in sessions with people's assessors as members of the court; judges and people's assessors shall have equal votes. The president of the court shall rule as sole judge only in those instances specifically authorized by the law.

(5) Judges and people's assessors shall render independent decisions and shall be bound only by the law.

(6) No person shall be considered guilty prior to a pronouncement of conviction by a lawfully convened court.

(7) The criminal authorities shall verify and gather evidence as a part of their official duty or upon the request of the parties concerned so that all the circumstances relative to the

disposition of the case may be elucidated; at the same time they shall be responsible for ensuring that evidence both favorable and unfavorable to the accused is equally carefully weighed. An admission of guilt by the accused does not relieve the authorities conducting the proceedings from their obligation to examine and verify all available evidence and all the circumstances of the case.

(8) The evaluation of evidence presented in court shall be left to the discretion of judges and shall be based on their careful consideration of all the circumstances in the case, either individually or jointly.

(9) Evidence from witness, experts, and the accused shall be obtained by the court through direct hearings; exceptions are permissible only when authorized by this law.

(10) In arriving at decisions in Supreme and appellate court proceedings, and in public or closed sessions, the court shall consider only that evidence which has been presented in such proceedings.

(11) In primary and appellate proceedings the public may be excluded only in those instances authorized by law.

(12) Any person against whom the court institutes proceedings must always be advised of all his rights, including the right to select one's own defense counsel, and to have a full defense; all authorities responsible for court proceedings shall have the duty to assist in safeguarding the rights of the accused.

(13) Every person shall be entitled to use native language in court.

### Article 3. Cooperation of National and Other Authorities

(1) National authorities and any other authorities performing the functions of national administration and all organizations of the socialist sector shall have the duty to assist the authorities responsible for criminal proceedings in the discharge of their duties, especially by responding promptly to any requests directed to them and by reporting without delay any offenses to the prosecutor.

(2) The provisions of Paragraph 1 shall not affect the obligation to safeguard national and economic secrets, nor any other secrecy obligation expressly imposed or recognized by the state.

(3) The authorities responsible for criminal proceedings shall have the duty to cooperate in the execution of this law.

### Article 4. Consideration of Preliminary Issues

(1) It shall be the duty of the authorities responsible for criminal proceedings to consider independently any existing preliminary issues; should there exist, however, any lawful decision of a court, administration, or any other national authority pertaining to such issue, this decision shall constitute the basis for the decision being rendered; this provision shall not apply to findings of guilty.

(2) Lawful decisions of courts on questions of personal status which have been rendered in civil proceedings shall always be binding upon the authorities responsible for criminal proceedings; when no such decision has been rendered, no action shall be taken

prior to its rendition; if appropriate proceedings have not been instituted, the prosecutor shall recommend their initiation.

Article 5. Persons Exempt from the Jurisdiction of the Criminal Authorities

(1) The jurisdiction of the criminal authorities under this law shall not extend to persons enjoying diplomatic immunity and privileges or personal freedom.

(2) Whenever doubt exists as to jurisdiction over such persons, the Minister of Justice shall be requested to render a decision which shall be binding upon all criminal authorities under this law.

Article 6. Impermissibility of Criminal Proceedings

Criminal proceedings shall not be initiated, and if they have already been initiated, shall not be continued and shall be dismissed, if

(a) The President so directs under his right of pardon or amnesty,

(b) The accused is a person who according to the law cannot be prosecuted without the consent of a competent authority and such consent has not been granted,

(c) The accused for reasons of minority cannot be held responsible,

(d) The accused dies,

(e) The accused has previously been convicted for the same offense, or against whom proceedings for the same offense have been dismissed by a court of prosecutor, and retrial has been denied, or

(f) Previous proceedings for the same offense have terminated in a lawful decision of another authority having jurisdiction over the offense, unless retrial has been approved or the offense, previously classified as minor offense, is found to be a major offense.

#### Article 7. Definitions of Terms

(1) Criminal authorities -- courts, prosecutors, and investigating authorities (Article 172).

(2) Any reference in this law to people's and kraj courts shall apply in the sphere of military law to military district court and higher military courts, unless otherwise indicated in the specific provision of the law.

(3) Any reference in this law to a judge shall also apply to military judges, and unless otherwise indicated by the nature of the case, to people's assessors.

(4) Any reference in this law to okres prosecutors shall also apply to district prosecutors or district traffic prosecutors and in the sphere of military law to the military district prosecutor; any reference to kraj prosecutors shall also apply to municipal prosecutors and regional traffic prosecutors and in the sphere of military justice to the higher military prosecutor, unless otherwise stipulated by the law.

(5) The term "parties" shall include accused persons, participants, injured parties, and persons who recommend or request the initiation of proceedings or seek legal redress, and during trial, the prosecutor also.

(6) Unless otherwise indicated by the nature of the case, the term "accused" shall also refer to persons who have been charged or convicted persons.

(7) The term "charged" shall refer to persons against whom a bill of charges has been accepted by the court, and in cases where pretrial processing of the charges is not required, a person whose trial has been ordered.

(8) The term "convicted person" shall refer to persons upon whom sentence has been pronounced and is legally effective.

(9) The term participant shall refer to persons whose property has been confiscated or shall be confiscated according to the decision, if they are not charged at the trial, or a person who is or may be held responsible for providing the coverage of unprocurable monetary punishment.

(10). The term "injured party" shall refer to persons who are damaged as a result of the offense committed, if entitled to remedy in the court under civil procedure and if not codefendants at the trial.

(11) Any reference in this law to an offense shall be understood to include a minor offense, if the prosecutor orders an investigation in view of the relationship of the minor offense to the criminal offense committed by the same accused, or if the prosecutor considers that other or higher punishment than can be imposed by the national committee or another authority is required for the minor offense in view of its degree of danger to society; furthermore, a minor offense which for the same reason has been charged by the prosecutor of which the court deems to be included in the offense charged.

(12) The term "criminal proceedings" shall refer to proceedings conducted under the provisions of this law; the process of prosecution until terminated by a pronouncement of sentence or a decision dismissing charges.

## CHAPTER 2. PROCEDURE

### Section 1. Scope of Activity and Jurisdiction of Courts

#### Article 8. Scope of Activity of Courts

Courts shall consider and decide criminal offenses and minor offenses which the prosecutor brings before the court.

#### Article 9. Jurisdiction of General Courts

General courts shall have jurisdiction over criminal offenses except when according to the law the offense falls under the jurisdiction of the military court.

#### Article 10. Jurisdiction of Military Courts

(1) Military courts shall exercise jurisdiction over

(a) Military personnel on active duty,

(b) Members of militarized organizations or similar units as specified by special legislation,

(c) Prisoners of war.

(2) The jurisdiction mentioned in Paragraph 1 shall extend only to offenses committed while in the status on which such jurisdiction is based.

(3) If it is ascertained that the offense was committed while in a status subject to the jurisdiction of a military court shall

refer the case to a general court. A charge of the offense shall be filed directly with the general court. The general court shall not refer such cases back to the military court.

(4) The provisions of Paragraph 3 shall not apply to those offenses covered under Part One, Section 3, Special Part of Criminal Law, or to military offenses.

#### Article 11

(1) Military courts shall also exercise jurisdiction over

(a) Military personnel on inactive status for the offense of failure to report for military service (Articles 265 through 267, Criminal Code), and

(b) Civilian personnel for offenses affecting the national defense under Part One, Section 3, Special Part of Criminal Law.

(2) Military personnel and members of those units mentioned in Article 10, Paragraph 1, clause (b), shall be subject to the jurisdiction of military courts while on inactive status for military offenses committed while in uniform.

#### Article 12. Jurisdiction over Cases

Unless otherwise directed by this law people's courts shall try cases as courts of primary jurisdiction.

#### Article 13

(1) The kraj courts shall be courts of primary jurisdiction for those offenses cited in Part One, Special Part of the Criminal Code, and the National Security Law, for which the law specifies



the death penalty, confinement for 5 years, and for the offenses of subversive activity, terrorism, disruptive activity, and sabotage (Articles 79a, 80a, 84 and 85, Criminal Code).

(2) The higher military courts shall be courts of primary jurisdiction for offenses committed by officials for which the court has been established.

#### Article 14. Jurisdiction as to Place

(1) Cases shall be tried by the court of the district in which the offense is committed.

(2) If the place of the offense cannot be ascertained or if the offense is committed abroad, the case shall be tried by the court having jurisdiction over the area in which the accused resides, is employed, or temporarily lives; if not determined or outside of the territory of the Czechoslovak Republic, the case shall be tried by the court of the district in which the offense is reported.

#### Article 15

(1) Offenses committed by members of the armed forces on active duty with a unit for which a military court has been established shall be tried by this court.

(2) Offenses committed by officers of the armed forces shall be tried by a military court designated by the President as competent to try such officers.

#### Article 16. Joint Trials

Joint trials shall be instituted for multiple offenses of a single accused person or against several persons accused of

related offenses. However, a general court shall not initiate a joint trial for an offense committed by a person subject to military jurisdiction, and vice versa.

Article 17

Joint trials shall be instituted by the kraj courts if any of the offenses charged falls under the jurisdiction of the kraj courts.

Article 18

Joint trials shall be instituted by the court competent to try the principal offender or the most serious offense charged.

Article 19

If several courts have jurisdiction over a case under the above circumstance the case shall be tried by the court to which the prosecutor submits the bill of charges or to which the case has been referred by a court with jurisdiction to try the case.

Article 20. Excluding Cases

(1) To expedite the disposition of cases or for any other sufficient cause some of the offenses or some of the accused persons may be excluded from joint trial and tried separately.

(2) The jurisdiction of the court over the excluded case remains unchanged; if, however, a kraj court excludes a case which normally would be tried by a people's court, it may refer such case to the locally competent people's court.

Article 21. Combining Cases

If warranted, the court may combine for joint trial and joint decision cases for which separate bills of charges have been submitted.

Article 22. Jurisdictional Disputes

Disputes as to jurisdiction of courts shall be resolved by the next higher court.

Article 23. Withdrawal and Referral of Cases

If warranted for sufficient cause cases may be withdrawn from the jurisdiction of a competent court and referred to a court of same functional level; decisions to withdraw and refer cases shall be made by the next higher court.

Article 24

(1) Upon the recommendation of the President of the Supreme Court or the Prosecutor General, the Supreme Court may

(a) If warranted by the nature of the offense or the personality of the accused withdraw the case from a competent people's court and refer the case for trial and decision by the kraj court;

(b) If warranted by sufficient cause withdraw a case, wherein an appeal has been taken from the decision of people's court, from a competent kraj court and render a decision on the appeal in the Supreme Court.

(2) If the offense represents a threat to the national security, the Supreme Court may withdraw the case from a competent

general court and refer it for consideration and decision by a military court of the same or higher functional level.

## Section 2. Disqualification of Criminal Authorities

### Article 25

(1) No judge, prosecutor, investigating officer, or recorder shall perform any function in any criminal proceeding if doubt exists as to the bias of the such person in the case under consideration or towards the persons involved, their defense counsel, legal representatives, or agents; judges shall also be subject to disqualification on the ground of bias against the prosecutor, and the prosecutor on the ground of bias against the investigating officer.

(2) No judge shall perform any function in a criminal proceeding if he has previously acted in the case under consideration as prosecutor, investigating officer, defense counsel, or representative of a participant or injured party.

(3) In the higher courts, any judge who has rendered a decision in the same case on a lower court shall be disqualified and vice versa. Any prosecutor who has handled the case under consideration in a lower court shall be disqualified.

### Article 26

(1) Upon determining the existence of grounds for disqualification or if any member is challenged by any of the parties, the judge shall report the finding to the president of the court, the president of the court to the superior court, and any other person of immediately superior authority; pending the decision of these authorities regarding disqualification, only those actions which cannot be postponed shall be carried out.

(2) With the consent of the judge whose disqualification is under consideration, the president of the court may, without deciding the issue of disqualification, assign the case to another judge or designate another judge to serve as a substitute on the court.

### Section 3. Recorders and Interpreters

#### Article 27. Recorders

If the case requires written records, a recorder shall be sworn. If a recorder cannot be obtained, this duty shall be performed by an uninterested party of legal age in the capacity of a witness.

#### Article 28. Interpreters

(1) If interpreting of hearings or translation of written documents is required, or if the accused does not speak the language used during the proceedings, an interpreter shall be appointed; interpreters may also act as recorders.

(2) No person shall serve as an interpreter is disqualified for the reasons cited in Article 25, Paragraph 1.

(3) Interpreters shall be advised in the notice of appointment of the consequences of failure to appear (Article 74) and of his responsibility to reveal without delay any reasons which could disqualify him from serving and performing his duty as interpreter.

(4) Interpreters shall be advised of their duty to translate accurately the content of statements and written documents and the duty not to reveal anything learned in his capacity as interpreter;

they shall be further advised of the importance of this function with regard to common interest and of the penal consequences of perjury.

#### Article 29

(1) Interpreters shall be entitled to compensation for expenses and appropriate remuneration for their work.

(2) The amount of remuneration shall be determined by the persons appointing interpreters and in court proceedings by the president of the court. Such decisions may be appealed which shall have the effect of suspension.

#### Section 4. The Accused

##### Article 30. The Accused

A person suspected of having committed a criminal offense shall be considered an accused only after charges have been preferred (Article 178).

##### Article 31. Rights of the Accused

(1) An accused shall have the right to make statements regarding all points of the bill of charges and the evidence against him, to cite any circumstances and present any evidence in his favor, and especially the right to make motions during the trial, the right to select his own defense counsel and request legal redress. The accused shall have these rights even if legally incompetent.

(2) All criminal authorities shall have the duty to advise the accused of his rights and to afford him full opportunity to use them.

Article 32. Legal Representative of the Accused

The legal representative of an accused who is legally incompetent shall be responsible for representing the accused, especially for selecting a defense counsel, motions in the name of the accused, and requests for legal redress; he is authorized to be present in all instances wherein the law permits the presence of the accused. A legal representative may exercise the above rights in favor of the accused against the will of the accused.

Section 5. DefenseArticle 33. Defense Counsel

(1) Unless otherwise directed, only a lawyer can be a defense attorney; in the sphere of military law and in trials of cases under the jurisdiction of kraj courts, defense counsel can be only those lawyers registered on the special roster of the Ministry of Justice.

(2) In trials, appellate hearings, and in public hearings, defense counsel shall not be any person who has been called as a witness, expert, or interpreter.

Article 34. Selection of Defense Counsel

(1) If the accused or his legal representative do not exercise their right to select a defense counsel, such selection may be made by a close relative, brother or sister, foster parent, adopted child, spouse, or participant at their expense. If the accused is legally incompetent, such action may be taken against the will of the accused.

(2) If the court, and in preliminary proceedings the prosecutor or investigating officer, are not advised of the name of the defense counsel by the person who selects, the defense counsel shall provide evidence of his engagement to perform the function.

(3) The accused shall have the right to select a defense counsel of his own choice in lieu of the defense counsel appointed for him or selected by another authorized person.

Article 35. Appointment of Defense Counsel.

(1) If the accused does not have a defense counsel in a case where representation by defense counsel is mandatory and within the prescribed time limit does not furnish evidence of selection of defense counsel, a defense counsel shall be appointed for the accused at his expense.

(2) If the accused in the cases mentioned in Paragraph 1 is financially unable to defray the cost of defense, a defense counsel shall be appointed to conduct the defense without compensation.

(3) If the accused is financially unable to defray the cost of defense, defense counsel shall be appointed to conduct his defense without compensation even in those cases where representation by counsel is not mandatory, if the accused so requests.

(4) In the joint trial of several accused persons whose interests are not in conflict, one defense counsel shall be generally appointed.

Article 36

(1) Defense counsel shall be appointed by the president of the court, and in preliminary proceedings by the prosecutor,



generally in cooperation with the bar association; they are also responsible for relieving the appointed defense counsel from his duty to defend the accused.

(2) In the sphere of military law, an officer-lawyer on active duty may be appointed as defense counsel with the consent of the commander in urgent cases when an attorney is not immediately available and if required by the nature of the case; officers serving in the office of the military prosecutor shall not be so appointed.

#### Article 37

(1) The appointed defense counsel must accept the defense of the accused; for sufficient cause he may, however, request release from such duty and another defense counsel shall be appointed.

(2) The accused may request for sufficient cause appointment of a substitute defense counsel. The appointed defense counsel may also be directed to represent the accused without compensation.

#### Article 38. Powers of Defense Counsel.

(1) Defense counsel shall have the right to make in the name of the accused recommendations in preliminary proceedings, to make motions, and request legal redress. In informing the accused of the results of investigation (Articles 183 and 184) and at any later time counsel is authorized to talk with the accused held in custody privately and have access to all records.

(2) During the trial defense counsel shall have the right to take part in all proceedings in which the presence of the accused is authorized.

(3) If the accused is legally incompetent defense counsel shall exercise his powers under Paragraphs 1 and 2 against the will of the accused.

(4) If the powers of defense counsel have not been otherwise limited, they shall extend to all proceedings, even in the case of appointed counsel.

#### Section 6. Participants

##### Article 39

(1) Participants shall be afforded an opportunity to make a statement relative to the case; they are authorized to attend trial and appellate proceedings and public hearings and to make motions.

(2) The criminal authorities shall advise the participant of his rights and afford him full opportunity to exercise them.

##### Article 40

If a participant is a minor, his rights under the provisions of this law shall be assumed by his legal representative.

#### Section 7. Injured Parties

##### Article 41. Claims of Injured Parties

(1) Injured parties shall have the right to request the trial court to decide claims for compensation for damages suffered through the offense charged and the right to make motions. This right shall not extend to trials under the jurisdiction of kraj courts (Article 13, Paragraph 1).

(2) The criminal authorities shall advise injured parties of their rights and afford them full opportunity to exercise them.

(3) The right to claim compensation under the provisions of Paragraph 1 shall not extend to cases in which the injured party has submitted a claim for compensation for damages in civil proceedings.

#### Article 42

If an injured party dies, his rights shall be assumed by his legal representative.

#### Article 43. Legal Representatives of Injured Parties

If an injured party is not legally competent, his rights shall be assumed by his legal representative.

#### Article 44. Guaranty of Claims of Injured Parties

(1) If there are grounds to believe that the satisfaction of a claim for compensation for damages sustained may be obstructed, the court, and in preliminary proceedings the prosecutor, may order attachment of the property of the accused in the approximate value of the damage; an inventory of property so attached shall be prepared and retained in the custody of a public notary or the court. To satisfy the coverage of the claim a lien may be placed on any interests of the accused, with the exception of wages, health insurance, and social security benefits; debtors of an accused shall be directed to deposit the subject of the debt with the public notary or the court.

(2) The accused shall be advised of the lien and given an explanation of the provisions of Article 45.

(3) The accused may appeal the decision imposing the lien.

(4) The provisions of Paragraphs 1 through 3 shall not apply to cases under the jurisdiction of kraj courts (Article 13, Paragraph 1).

(5) An injured party may not file a claim under the provisions of Paragraph 1 if such claim has already been filed in a civil proceeding.

#### Article 45

(1) Attachment orders must be cancelled, if

(a) The reasons for the order no longer exist,

(b) The proceedings terminated in dismissal of charges or acquittal of the accused,

(c) One month after the execution of a sentence upon a verdict of guilty, or

(d) If attachment was ordered through administrative error extending to property of which the accused is not a rightful owner.

(2) Attachment orders must be modified if it becomes evident that it is not required in the extent in which ordered.

#### Section 8. Agents of Participants and Injured Parties

##### Article 46

(1) Participants of injured parties may elect to be represented by an agent. If the court, and in preliminary proceedings the prosecutor or investigating officer, are not advised of the name of the agent, the agent must provide evidence of his engagement for the function.

(2) Agents of participants or injured parties shall be legally competent persons of good moral character; in trial and appellate proceedings and in public hearings, no person who has been called as a witness, expert, or interpreter shall be an agent.

(3) In the sphere of military law and in cases under the jurisdiction of kraj courts (Article 13, Paragraph 1), an agent must be a lawyer who could qualify as a defense counsel in the case.

#### Article 47

(1) Agents of participants or injured parties are authorized to make recommendations in the name of the participant or injured party, make motions, and request legal redress; they are authorized to participate in all functions wherein the presence of the participant or the injured party is authorized.

(2) If the authorization of the agent contains no limitations, it shall extend to all proceedings.

### CHAPTER 3. PROCEDURE

#### Article 48. General Provisions

During all stages of proceedings, the person involved shall be treated in a manner consistent with the purpose and educational aim of criminal proceedings, with due respect to their personalities and constitutional rights; their motions shall be granted insofar as possible.

Section 1. Location and TimeArticle 49

(1) Procedural functions shall generally be conducted in the office of the official responsible for their execution. If required by the nature of the function or in the interests of prompt action, necessary clarification, or any other sufficient cause, procedural functions may be accomplished outside the office of the responsible official or the loans of a competent court, prosecutor, or investigating authority.

(2) If any proceeding is to be conducted in an establishment of national authority and/or institution, plant, or any other organization, the person in charge shall be advised in advance.

(3) In the military establishment, the conduct of any proceeding shall require the approval of the responsible commander.

Article 50

(1) Proceedings shall be normally conducted during working hours. Only in urgent cases shall such proceedings be conducted on holidays or at night.

(2) The date for a proceeding shall normally be established 3 days in advance if several persons are involved. If the testimony of a larger number of persons from the same work site is required, the hearing may be conducted by agreement with their supervisor at their place of employment, even without their prior notice; if testimony is required from members of armed forces serving in the same unit, the approval of the commander must be obtained.

Section 2. RequestsArticle 51

1. Courts, prosecutors, and investigating authorities shall generally conduct individual criminal proceedings in their districts. If any proceeding must be conducted outside their districts, it shall be generally conducted at their request by the people's court, prosecutor, or investigating authority of the other district and/or by a military court or military prosecutor; if the case cannot be postponed or when required for a proper consideration of the case, the court, the prosecutor, or the investigating authority may perform procedural functions outside their districts.

(2) The Supreme Court and the kraj courts may delegate the execution of any function in the area of their jurisdiction to the competent people's court; the Supreme Court may also delegate the execution of any function to the competent kraj court.

(3) In the sphere of military law military courts of military prosecutors may request the competent people's court to conduct individual criminal proceedings.

Article 52

(1) If the conduct of a requested proceeding requires a detailed knowledge of the documents, the documents of pertinent portions thereof may be attached to the request.

(2) When necessary for the successful conduct of proceedings, statements obtained from persons and other circumstances not requested in the original communication may be included in the report of the completed proceeding.

Article 53

The requested proceeding shall be conducted in a competent court by one judge acting alone who shall have the rights and duties of the president of the court.

Section 3. RecordingArticle 54. Preparation of Records

Every procedural action must be recorded during the proceeding, or if this is not possible, immediately thereafter.

(2) Proceedings shall be recorded by a recorder, or if a recorder cannot be appointed (Article 27) by the person conducting the proceeding. Records of trials and appellate proceedings and proceedings in open court shall be dictated to the recorder by the president of the court or written in accordance with his directives; prior testimony of witnesses shall be included in the record if it contains any discrepancies or additions to the testimony given in the court. The closing arguments of the parties normally shall not be included in the record; the record shall state only the order in which the arguments are presented and the final recommendations.

(3) The principal party in the action or proceedings shall be permitted to dictate his own statement and a notation to that effect shall be entered in record.

(4) Records of hearings conducted not as a part of trial or appellate proceedings or proceedings in open court, involving several accuseds or witnesses, shall be prepared for every person heard individually. Subsequent hearings shall normally be summarized in the form of supplements to the original record.



(5) Statements of persons who do not speak the Czech or Slovak languages shall be recorded in one of these languages; where a verbatim report is required, the recorder or the interpreter shall record that portion in the original language used.

Article 55. Content of the Record

(1) The record shall contain

(a) The names of the court, the prosecutor, and any other authority conducting the proceedings,

(b) The location, time, and subject of the action,

(c) The first and last names of officials and their titles; the first and last names of the parties, their legal representatives, defense counsel or agents, and any person appointed in accordance with Article 27,

(d) A summary of the proceedings to indicate clearly that all the procedural provisions are complied with, and if a decision is rendered in the proceedings, the substance of the decision,

(e) The motions of the parties, statements of advice furnished, and depositions of persons so advised,

(f) The objections of parties or witnesses with regard to the content of the record.

(2) If any drawings, photographs, or similar supplementary documents are presented during the proceedings, such documents shall be appended to the record. If any material or written evidence is presented during the proceedings, the evidence shall be clearly marked in the record to prevent the possibility of future erroneous substitution.

(3) The record shall be written in ink or by typewriter, legibly, and insofar as possible without deletions; corrections must be legible. In important cases a stenographic service may be used in addition to the record; stenographic notes and transcriptions shall be appended to the record.

#### Article 56. Authentication of the Record

(1) Records of trial and appellate proceedings and proceedings in open or closed court shall be signed by the president of the court and the recorder; other records shall be signed by the person responsible for the action recorded, the recorder when one is appointed, and the person whom the action concerns; if applicable interpreters, experts, or any other persons directly involved in the action shall also sign the record. Records containing more than one page shall be signed by the person making the statement on every page; if the person making the statement or any other person directly involved in the action refuses to sign the record, the reason for such refusal shall be entered in the record.

(2) If for any reason which would cause prolonged delay the president of the court cannot sign the record, the record shall be signed by a member of the court. If any other person cannot sign the record for reasons which would cause prolonged delay, their signatures shall not be required, and the reasons shall be included in the record.

#### Article 57. Correction of Records

(1) Decisions effecting corrections and additions to records concerning trial and appellate proceedings and proceedings in open and closed court and pertaining to objections against such records

shall be made by the court responsible for the preparation of the record. Such decisions may be appealed.

(2) The persons responsible for the recorded action or proceeding may execute or direct the execution of corrections of typographical errors and any other obvious mistakes even after the record has been signed. Corrections shall be made in a manner which will render the original version legible and shall be signed by the person directing the correction.

#### Article 58. Record of Voting

(1) The record of voting shall include in addition to the general information (Article 55, Paragraph 1).

(a) The voting procedure used, the result of the voting, and the final decision, and

(b) The full text and brief justification of any opinion dissenting from the majority decision.

(2) The record of the voting shall be signed by all members of the court and the recorder.

(3) Records of all votes taken in the court pertaining to proceedings in the same action shall be included in one record of voting.

(4) If the court arrives at a decision by a unanimous vote after a brief conference in the court room without any interruption of the proceedings, no record of the voting shall be prepared; the record of the proceedings shall state that the decision was rendered without any interruption of proceedings.

(5) The record of the voting shall be appended to the record of the proceedings in a sealed envelope which may be opened only by the president of the court or a higher court for purposes of action upon an appeal, President of the Supreme Court for the purpose of action upon appeal on the grounds of error of law, or by the judge responsible for the execution of the sentence. After review of the record, the envelope shall be resealed and signed by the user.

#### Section 4. Accusations

##### Article 59

(1) Accusations may be made by letter, telegram, teletype, or verbally to a court, prosecutor, or investigating authority.

(2) Any person making an accusation by telegram or teletype may be requested to repeat the accusation within a given time limit in the form of letter with a specific number of copies. If the request is not complied with, the documents shall be prepared at the expenses of the person concerned; he shall be advised of this possibility in the request.

(3) Accusations shall be considered on the basis of their content, even if addressed incorrectly.

##### Article 60

(1) If an accusation is made verbally, the complainant shall be questioned with regard to the circumstances under which the alleged offense was committed, personal relations with the accused, evidence, and scope of damage caused by the alleged offense; if the complainant is the injured party or his agent, he shall be

requested to state if he desires that a court decisions regarding his claim for damages be rendered in the proceedings. The hearing shall be conducted in such a manner as to provide sufficient background material for further action.

(2) If an accusation made verbally is recorded by the court, they shall be immediately referred by the court to the prosecutor.

#### Section 5. Time Limits

##### Article 61. Determination

(1) The day of an action determining the beginning of a time limit shall not be counted in a time limited stated in days.

(2) Time limits stated in weeks, months, and years shall be terminated on the day which by name or numerical designation corresponds to the day of the action constituting the beginning of the time limit. If the final month of the time limit does not have such a corresponding day, the time limit shall expire on the last day of such month.

(3) If the termination of the time limit falls on a holiday, the next working day shall be considered to be the final day of the time limit.

##### Article 62

Actions shall be considered as accomplished within the time limit, if requests

(a) Are mailed addressed to the court, the prosecutor, or investigating authority responsible for the case of authorized to make decision in the case;

(b) Are made to the court or to the prosecutor who will handle the case;

(c) Are made by a member of the armed forces on active duty to his commander;

(d) Are made to the administration of the prison wherein the accused is held in custody or serving his sentence;

(e) Are made verbally and recorded in a people's court or by a district prosecutor

#### Article 63. Extension of Time Limits

(1) If an accused or his defense counsel fails to file an appeal within the prescribed time limit for sufficient cause, the court or the prosecutor deciding the case as an authority of primary jurisdiction shall grant an extension of the time limit provided the request for extension is submitted by the accused or his counsel within 3 days after the expiration of the time limit. When an extension is granted, the time limit for appeal shall start with the day of the authorization of extension.

(2) Decisions denying motions for extension may be appealed which shall have the effect of a suspension.

#### Section 6. Delivery of Notifications

##### Article 64. Manner of Delivery

(1) Written communication shall normally be delivered by mail; delivery may be also made by a messenger of the court, the prosecutor, or the investigating authority. A written communication may be also called for at the office of the criminal authorities.

and signed for. Any person conducting a criminal proceeding is also authorized to deliver a written communication; the record of the proceeding shall note that the delivery was made.

(2) When warranted, the executive organ of the competent national committee may be requested to effect the delivery; in the case of summonses, the competent police authority may effect the delivery.

Article 65

(1) Delivery to the addressee may be made at his home, place of employment, or any place where that person may be reached.

(2) Communications addressed to courts, prosecutors, investigating authorities, or any other national authorities, institutions, enterprises, or organizations shall be delivered into the hands of the persons authorized to accept mail.

(3) Communications addressed to members of the armed forces on active duty shall be delivered to them through their commanding officers; if the commanding officer is not known, delivery may be effected in the case of military personnel through the commanding officer of the station to which the addressee is assigned and in case of members of militarized organizations through the nearest police organization.

(4) Communications addressed to persons currently in custody or in confinement shall be delivered through the administration of the place of confinement.

(5) Communications addressed to persons enjoying diplomatic immunity or privileges or occupying their premises shall be forwarded to the Ministry of Interior which shall arrange for their delivery.

Article 66. Substitute Delivery

(1) If the person to whom the communication is addressed is not at home at the time of delivery, the communication may be left with any person living at the home, of legal age, who is willing to accept it.

(2) If the person to whom the communication is addressed is not at his place of employment at the time of delivery, the communication may be left with any coworker who is willing to accept it.

(3) The originator of the communication which under the provisions of Paragraphs 1 and 2 may be delivered into the hands of substitute shall add to the envelope of the communication the names of any person who may not be recipients of that communication in view of interest in the case or for any other reason.

(4) If the person to whom the communication is addressed no longer lives at the stated address and the messenger is able to ascertain his new address, the communication may be forwarded to the new address unless a notation on the envelope states that delivery to a place other than that stated is prohibited.

Article 67

(1) If the communication cannot be delivered in any manner stated in Article 66.

(a) The postal employee shall return the communication to the postoffice and if the place of delivery does not have a postoffice, to the local national committee;



(b) The messenger of the court, the prosecutor, or investigating authority shall return the communication to the sender if in the same locality; otherwise, he will deposit the communication with the local national committee;

(c) The official of the local national committee shall return the communication to the local national committee.

(2) The person responsible for delivery of the communication shall advise the addressee of the place where the communication is being held, either by a notice left in the addressee's apartment or mail box, affixed to the door of the addressee's apartment, or any other suitable place; insofar as possible he shall also inform persons living in the neighborhood of the addressee and coworkers in his place of employment of this action. Notices of delivery returned to the sender shall indicate the action taken and date and the place where the communication is deposited.

(3) The date on which the communication is deposited in the above manner shall be considered the date of delivery. This action shall have the validity of delivery even should the addressee of the communication have no knowledge of the action.

Article 68. Personal Delivery to the Addressee

The following communications shall be delivered into the hands of the addressee:

(a) Bill of charges and summons to the accused,

(b) Copy of decision authorizing an appeal to persons entitled to appeal,

(c) Any other communication as directed by the president of the court, the prosecutor, or investigating authority for sufficient cause.

Article 69. Substitute Delivery of Communications to be Delivered Personally

(1) If the communication cannot be delivered into the hands of the addressee although his residence is known, the person responsible for the delivery shall leave at any of the places states in Article 67, Paragraph 2, a notice requesting the addressee to be present on a specific day and at a specific hour to receive the communication. If this request remains unheeded, the person responsible for the delivery shall dispose of the communication as prescribed in Article 67, Paragraph 1 and shall advise the addressee in a notice of delivery (Article 67, Paragraph 2) that he is required to call for the communication within 3 days. If the communication has been held and not called for by the addressee within 3 days, the last day of the 3-day period shall be considered as the date of delivery, even if the addressee has no knowledge of the communication.

(2) Substitute delivery through holding is not authorized for communications to be delivered personally in the case of delivery of

(a) Charges and summons for trial and appellate proceedings to the accused,

(b) Copy of a decisions authorizing an appeal by the accused,

(c) Any other communication as directed by the president of the court, the prosecutor, or investigating authority for sufficient cause.

(2) If substitute delivery through deposit is not authorized the sender shall so indicate clearly on the delivery slip.

Article 70. Refusal to Accept

(1) If the addressee refuses to accept the communication, the person responsible for the delivery shall advise him of the consequences of such refusal and shall enter a note on the delivery slip to that effect, including the date and the reason for refusal, and shall return the communication.

(2) If the president of the court, the prosecutor, or investigating authority who originates the communication shall rule that the refusal is not justified, the communication shall be considered delivered on the date acceptance is refused.

Section 7. Access to Documents

Article 71

(1) Accuseds, the injured parties, participants, and their attorneys or agents shall have access to the documents in the case, with the exception of the voting record, and shall have the right to make notes and excerpts therefrom. This right also extends to legal representatives of accuseds, injured parties and participants if legally incompetent. Other persons may have such access with the consent of the president of the court, and in preliminary proceedings with the consent of the prosecutor or investigating authority, if required to enable them to assert their rights.

(2) In preliminary proceedings the prosecutor or the investigating authority may deny access to documents if the purpose of the criminal proceedings would be nullified through

such action; this restriction shall not apply to the accused and his defense counsel after the accused had been advised of the results of investigation (Article 183).

(2) A person authorized to be present during the execution of any action shall not be denied access to the records of such action.

#### Article 72

(1) Records may be reviewed only on the premises of the court, the office of the prosecutor, or the office of the investigating authority.

(2) Upon request and with the consent of the president of the court, prosecutor, or investigating authority, records and excerpts therefrom may be forwarded to another court, prosecutor, or investigating authority for review.

#### Article 73

Safeguards for state and economic secrets must be provided when approval for review of records is granted.

### Section 8. Fine for Disorderly Conduct in Court

#### Article 74

(1) Any person who attempts to disrupt any proceeding or behaves in an offensive manner towards the prosecutor or the investigating authority or who fails to obey without justification an order issued under the authority of this law, may be punished by the president of the court, and in preliminary proceedings by the prosecutor or the investigating authority, by a fine not to exceed 500.00 crowns. Such decisions may be appealed which shall have the effect of suspension.

(2) If a member of the armed forces is guilty of such misconduct, authority for disciplinary action may be delegated to the commander responsible for disciplinary action in the service.

(3) If such misconduct is committed by a person in custody or serving a term of confinement, authority for disciplinary action may be delegated to the prison administration to take appropriate action under the provisions of the prison regulations.

#### CHAPTER 4. CUSTODY OF PERSONS AND PROPERTY

##### Section 1. Arrest, Temporary Custody, and Apprehension And

##### Article 75. Arrest

(1) The police are authorized to arrest a person suspected of having committed a criminal offense only if such person is apprehended in the act of committing the offense.

(2) Apprehension in the act of committing an offense shall also extend to instances where a person is pursued immediately after an offense has been committed as a suspect or is apprehended immediately following the commission of an offense under circumstances indicating his implication in the offense, especially if objects instrumental to the commission of the offense or articles which are part of the loot are in his possession.

(3) Immediately following an arrest, the police shall prepare a written record which in addition to personal data on the arrested person will state the grounds for the arrest, the place and time of the arrest, the circumstances of the arrest, and the identification of the person making the arrest. A copy of this record shall immediately be forwarded to the prosecutor.

(4) Within 48 hours after arrest, the police shall either refer the arrested person to the prosecutor or release him.

#### Article 76

(1) In cases other than those mentioned in Article 75, Paragraph 1, the accused may be arrested only upon a written order of the court.

(2) A warrant for arrest may be issued only on the basis of one of the grounds for confinement (Article 79). Warrants shall be issued by the president of the court and shall specify the offense charges (Articles 178 and 180) and the reason for arrest. In preliminary proceedings, the issuance of warrants shall be determined upon the recommendation of the prosecutor. The prosecutor may appeal if his request is denied.

(3) Arrests shall be made by the police on the basis of a warrant. The warrant for the arrest shall be presented to the accused at the time of the arrest, and if not possible to do so, no later than 48 hours thereafter.

(4) The arrested person must be referred within 48 hours to the court, or if the warrant is issued for preliminary proceedings, to the prosecutor.

(5) A warrant for arrest shall be cancelled by the president of the court if the grounds for its issuance no longer exist.

#### Article 77. Temporary Custody

(1) A person suspected of the commission of an offense on the basis of established facts may be taken into custody by investigating authorities if any of the grounds for taking into custody exist (Article 79) and the case cannot be delayed.

(2) Investigating authorities shall immediately prepare a record of any custodial action taken which in addition to the personal data of the person taken into custody shall state the grounds for custody, time, and location of the action taken, and identification of the person responsible for the action. A copy of this record shall immediately be forwarded to the prosecutor.

(3) A person taken into custody must be referred within 48 hours to the prosecutor or released.

#### Article 78. Apprehension

Any person may apprehend an offender in the act of committing an offense if such arrest is necessary to ascertain the identity of the offender, to prevent his flight, or to obtain evidence. Such person must, however, deliver the apprehended person immediately to the prosecutor or police authorities. An apprehended member of the armed forces may be delivered to the nearest military installation or unit commander. When immediate delivery of the apprehended person is not possible, the action must be reported without delay to any of the cited authorities.

#### Section 2. Custody

##### Article 79. Grounds for Custody

An accused may be taken into custody only if there are valid grounds to believe that

(a) He will escape, especially if his identity and residence cannot be easily established or in view of the expected severity of punishment;

(b) The accused will attempt to influence witnesses or codefendants or otherwise obstruct the clarification of circumstances important for the criminal proceeding;

(c) The accused will commit the offense again, will commit the attempted offense, or will carry out the threat of the offense.

#### Article 80. Taking into Custody

(1) Only a person against whom charges have been filed (Article 78) may be taken into custody:

(2) Only the court and in preliminary proceedings, the prosecutor, shall be authorized to order taking into custody. After the accusation has been submitted the president of the court may order that the arrested person be taken into custody (Article 76).

(3) The question of custody must be decided within 48 hours after the person has been arrested, taken into temporary custody, or apprehended and delivered to the court or prosecutor. Prior to decision such person must be granted a hearing. The family and employer of the person taken into custody must be immediately advised of the action unless previously informed of the arrest and temporary custody; in the case of military personnel, the commanding officer shall be advised of the action taken.

#### Article 81. Duration of Custody

(1) If during preliminary proceedings an accused has been held in custody for 2 months, he must be released, unless the superior prosecutor grants an extension. The superior prosecutor may extend the custody for a period not to exceed 1 month on the basis of the grounds cited in Article 79, clause (a) or (c). Further extensions may be granted only by the attorney general.



(2) The duration of custody as defined in Paragraph 1 shall run from the day of apprehension, arrest, or taking into custody or temporary custody and shall terminate at the latest on the day upon which charges are preferred. Any time spent by an accused in an institution for the purpose of observation shall be counted (Article 130, Paragraph 2).

(3) In the case of minor offense, the period of custody shall not exceed 30 days to include custody during the court proceedings.

#### Article 82

(1) The prosecutor and the court shall have the responsibility to examine the validity of grounds for custody at any time during the proceedings; if the grounds are no longer valid, the accused must be immediately released.

(2) The accused shall have the right to request release at any time, and his request must be acted upon without delay.

(3) If the prosecutor approves the release of the accused, the decision to release the accused shall be made in court by the president of the court.

#### Article 83

If the accused is to be held in custody on the grounds cited in Article 79, clause (a), and furnishes a written statement pledging to comply with summons of the court, the prosecutor, or the investigating authority, and to notify them of any change of address, the authority responsible for the decision to take into custody may authorize cancellation of the intended action or release

from custody, if the statement of the accused is considered a satisfactory guarantee in the light of his character or the nature of the case under consideration.

Article 84. Appeals from Decisions to Take Into Custody

(1) Decisions to take into custody may be appealed.

(2) Only appeals by a prosecutor from a decision of a court ordering the release of an accused from custody shall have the effect of suspension. If the prosecutor is present at the time the decision is announced, his appeal shall have the effect of suspension only if taken immediately after the announcement; if, however, the decision to release from custody has been rendered in conjunction with an acquittal of the accused, an appeal from the decision shall have the effect of suspension only if the prosecutor simultaneously takes an appeal from the sentence of acquittal.

Section 3. Surrender and Seizure of Materials

Article 85. Duty to Surrender Material Evidence

(1) Any person who has possession of any item important to criminal proceedings shall have the responsibility to surrender such item at the request of the court, the prosecutor, or the investigating authority; the request shall advise the addressee that if not surrendered such item may be removed from his possession and shall state any other consequences of noncompliance with the request (Article 74).

(2) Authority to request the surrender of any material evidence rests with the president of the court and in preliminary proceedings with the prosecutor or the investigating authority.

#### Article 86. Seizure of Material Evidence

(1) If a person in the possession of an item required for the conduct of criminal proceedings fails to comply with the request for its surrender, the president of the court, and in preliminary proceedings the prosecutor or the investigating authority, may order the seizure of such item; the investigating authority must obtain the approval of the prosecutor prior to issuing a seizure order.

(2) Without the seizure order cited in Paragraph 1, an item may be seized only where such an order cannot be obtained in advance and action cannot be delayed.

(3) Whenever possible seizure shall be accomplished by an appointed disinterested party.

#### Article 87. Receipt for Material Evidence

The possession of a surrendered or seized item shall be given a receipt by the authority responsible for the action.

#### Article 88. Return of Material Evidence

(1) When an item is no longer required for use in criminal proceedings, it shall be returned without delay to the person who surrendered it or from whose possession the item was seized, unless ownership is disputed, in which case it shall be returned to the rightful owner. Such decisions may be appealed, which shall have the effect of suspension.

(2) If there is a danger that materials, which cannot be returned in accordance with the provisions cited in Paragraph 1,

will deteriorate, such materials shall be sold and the amount received deposited with the state notary or the court. The sale of such materials shall be conducted in accordance with the provisions governing court sales of confiscated articles.

(3) Decisions directing return or sale shall be made by the president of the court and in preliminary proceedings by the prosecutor.

Article 89

(1) If there are grounds to believe that an item surrendered by or seized from an accused has been obtained by him illegally, and either the proper owner or his whereabouts are unknown, a public announcement with a full description of the article shall be published. The announcement shall be published in the manner most effective for the purpose of finding the injured party and shall state that a claim for the article should be submitted within a year after the publication of the announcement.

(2) If no claim other than that of the accused has been submitted within the period specified in Paragraph 1, the article or money obtained through its sale shall be returned to the accused upon his request. If the accused does not claim the article or if it is evident that he is not the proper owner, the article shall be sold and the money obtained through the sale deposited with the state notary or the court. Such decisions may be appealed, which shall have the effect of a suspension.

(3) The president of the court, and in preliminary proceedings the prosecutor, shall be responsible for the actions and decisions cited in Paragraphs 1 and 2.

(4) Where the true owner is unknown, if the article is of no value, it shall be destroyed; if its value is minor, the article will be sold and money obtained through the sale deposited with the state notary or the court.

#### Article 90. Records

Records concerning surrender or seizure shall include a description of surrendered or seized property.

#### Section 4. House and Personal Search

##### Article 91. Grounds for Search

(1) House searches may be conducted if there is reasonable belief that the dwelling and adjoining rooms or premises contain material evidence important to the conduct of criminal proceedings or that they are being used as a place of concealment by a person suspected of a criminal offense.

(2) Personal searches may be conducted if there is reasonable belief that a person has in his possession material evidence important to the conduct of criminal proceedings; a person who has been arrested or taken into temporary custody may be searched if suspected of being in possession of a weapon or any other articles which could endanger life or cause injury to police officials or other persons, or could be used as a suicide weapon.

##### Article 92. Search Warrants

(1) If the president of the court, prosecutor, or investigating authority does not conduct the search personally, it shall be conducted by police on the authority of a warrant issued by them. Warrants for house search must be in writing and

contain a justification; it shall be presented to the person concerned during the search, and if this is not possible, within 48 hours after search. The investigating authority must obtain the consent of the prosecutor prior to the search or prior to the issuance of warrant for its execution.

(2) Police may conduct house and personal searches without a warrant under Paragraph 1 only where a warrant cannot be obtained in advance and action cannot be delayed, or where a person is apprehended in the act of committing an offense, or where an arrest warrant has been issued.

#### Article 93. Preliminary Hearings

House or personal searches may be accomplished only after a preliminary hearing of the person concerned and only in instances where the hearing did not result in a voluntary surrender of the required article nor elimination of other grounds for search. Preliminary hearings need not be held if the search action cannot be delayed and a hearing cannot be arranged.

#### Article 94. Conduct of Search

(1) Authorities conducting house searches shall provide for the presence of the person concerned or the presence of an adult member of the household. He shall be further responsible for advising such persons of their right to be present.

(2) House searches shall be witnessed by a disinterested party.

(3) Authorities conducting searches shall present their credentials.

(4) Person subjected to search shall be given immediately, or if that is not possible, within 48 hours after the search, by the authorities conducting the search a written statement specifying the grounds for the search, its results, and the list of articles surrendered or seized during the search.

#### Article 95. Records

Records of searches shall contain a statement regarding compliance with the provisions governing preliminary hearings (Article 93) and the issuance of written statements (Article 94, Paragraph 4), or reasons for failure to comply with these provisions.

### Section 5. Interception and Opening of Mail

#### Article 96. Interception

(1) If in order to clarify circumstances bearing upon the case the contents of undelivered telegrams, letters, or any other communications sent by an accused or addressed to him must be known, the president of the court, and in preliminary proceedings the prosecutor or the investigating authority, shall request the carrier to deliver such communications to them; investigating authorities shall obtain prior approval for such action from the prosecutor.

(2) The police authorities are authorized to intercept the delivery of communications without compliance with the provision cited in Paragraph 1 only in those instances where the authorization mentioned above cannot be obtained and action cannot be delayed. If in such instances the carrier does not receive from the president of the court, prosecutor, or investigating authority a request for delivery of the intercepted material within 3 days, the agency must release the material for regular delivery.

Article 97. Opening of Mail

(1) Communications delivered in accordance with Article 96, Paragraph 1, may be opened only by the president of the court, prosecutor, or investigating authority; the investigating authority must obtain prior approval for such action from the prosecutor.

(2) The opened communication shall be delivered to the addressee, and if his whereabouts is unknown, to members of his family; in other cases the communication shall be returned to the sender. If there are grounds to believe that delivery of the communication would have an adverse affect on criminal proceedings, it shall be attached to the record; if appropriate, the addressee, or if his whereabouts are unknown, members of his family, shall be advised of the content of the letter or telegram.

(3) If it is ascertained that opening of the communication is not necessary, it shall be immediately transmitted to the addressee or returned to the carrier from which it was obtained.

Section 6. Apprehension and Confiscation by PoliceArticle 98

(1) If prior to the initiation of investigation it becomes necessary to take a person suspected from having committed a criminal offense into temporary custody (Article 77), confiscate an article (Article 86 and following), or conduct a house or personal search, the police shall request approval of such action from the prosecutor; without the approval of the prosecutor the police are authorized to take such action only if approval cannot be obtained and action cannot be delayed. In such instances the police must request



approval from the prosecutor within 48 hours, and if a suspect has been taken into temporary custody, the police must within 48 hours either refer such person to the prosecutor or release him.

(2) In conducting the actions mentioned in Paragraph 1, the police shall act under the authority of this law. The legality and urgency of such actions must be verified by the prosecutor.

#### CHAPTER 5. RULES OF EVIDENCE

##### Article 99. General Provisions

Evidence is any material relevant to clarification of the case, primarily the testimony of the accused, witnesses, and experts and any other articles or documents important to the conduct of criminal proceedings and evaluation.

##### Section 1. Testimony of Accused

##### Article 100. Subpoenas and Warrants of Attachment

1. If an accused who has been duly summoned does not appear for hearing, a warrant of attachment shall be executed; the summons shall contain a warning that such action may be taken and will advise of other consequences of failure to appear (Article 74).

(2) An accused may be apprehended and brought to court without a warrant of attachment if so required for the successful conduct of criminal proceedings, especially in instances where an accused is in hiding or without permanent address.

(3) The official conducting the hearing shall request the police to execute the warrant of attachment; if the accused is a minor, police action will be utilized only if there is no employee of the court, the prosecutor's office, or juvenile authority

available. If an accused is a member of the armed forces, the warrant of attachment shall be executed by his commanding officer.

Article 101. Hearing of Accused

(1) If more than one accused are to be heard, each person shall be heard separately; provision must be made to prevent codefendants in the same case from communicating with each other.

(2) The official conducting the hearing shall have the responsibility of ascertaining the identity of the accused, his personal and family relations, material circumstances, employment, and any previous convictions, and shall have the responsibility to advise the accused of the charges against him and his rights. The content of the advice given shall be noted in the record. Having established the above, the official conducting the hearing shall afford the accused an opportunity to make a detailed statement with regard to the charge, especially to describe the sequence of events constituting the transaction from which the charge stems and to introduce any circumstances which might mitigate or refute the charge, and to present evidence to support them. The statement of the accused shall be recorded in the first person and shall be verbatim insofar as possible.

(3) All questions asked of the accused in order to supplement his statement, eliminate any gaps, clarify his statement, or correct discrepancies, and his replies, shall be included in the record as required. The official conducting the hearing shall ask clear and open questions, without the use of deceptive or untrue statements; leading questions shall not be permitted.

(4) The accused shall be allowed to consult written notes before giving his reply; these notes shall, however, be presented to the official conducting the hearing, if he so desires; such action shall be noted in the record.

(5) The accused may be allowed to write his statement by hand, if he so requests.

Article 102

(1) The hearing of the accused shall be conducted in such a manner as to provide insofar as possible, a full and clear picture of the transaction important to the conduct of the criminal proceeding; the accused shall not be coerced in order to extort statements or confessions and his personal rights shall be respected during the hearing.

(2) Confession by the accused shall not relieve the official conducting the hearing of responsibility to examine and verify by means of all available evidence all the circumstances relevant to the case.

(3) If a hearing is conducted for the purpose of ascertaining the identity of a person or a thing, the official conducting the hearing shall ask the accused to describe such person or thing. Only then shall the accused be confronted with the person or thing, generally among several persons or things of the same kind.

(4) If the handwriting of the accused is to be verified, the official conducting the hearing may request the accused to write a prescribed number of words; under no circumstances, however, shall the accused be forced to do so. The accused shall, however, perform any action required to verify his identity.

Article 103

If a statement by the accused differs materially from a statement by a witness or a codefendant and the discrepancy cannot be otherwise resolved, a face to face confrontation is authorized.

Article 104

With the exception of the records of trial and appellate proceedings and proceedings in open court, after the conclusion of the hearing the accused shall be afforded opportunity to read the record or have it read to him, if he so requests; the accused shall have the right to request additions or corrections to the record in accord with his replies. The accused must be advised of this right.

Section 2. WitnessesArticle 105. Duty to Testify

Every person has a duty to obey summonses and to testify as a witness and reveal all that is known to him relevant to the offense, the offender, or circumstances bearing upon the case and relevant to the criminal proceeding.

Article 106. Subpoena and Warrant of Attachment

If a witness who has been duly summoned fails to appear without sufficient cause, a warrant of attachment may be executed; the summons shall contain a caution that such action may be taken and shall advise of other consequences of failure to appear (Article 74). If a witness is a member of the armed forces on active duty, the commanding officer of his unit or of the military installation to which he is attached shall be requested to show cause for failure to appear or shall be requested to execute the warrant of attachment.

Article 107. Restrictions Applicable to Hearings

(1) Witnesses shall not be questioned on issues involving state or economic secrets which he cannot divulge unless he has been released from the responsibility to safeguard such information by competent authority; releases shall not be granted if disclosure of secret information would cause considerable damage to national security.

(2) Witnesses shall not be questioned if the testimony would violate any secrecy obligation expressly imposed upon him or recognized by the state, unless he has been released from such obligation by competent authority or the person in whose interest such obligation has been imposed.

(3) The privilege cited in Paragraph 2 shall not apply to the testimony of any witness relative to a criminal offense for which the witness is responsible for reporting under the provisions of Article 165, Paragraph 2, Criminal Code.

Article 108. Privilege to Refuse to Testify

(1) A privilege to refuse to testify shall extend to the blood relatives of an accused, foster brothers, or sister, foster parents, adopted children, and spouse; if there are several codefendants and the witness stands in any of the above relationships to one of them only, he shall be privileged to refuse to testify as regards the codefendant only when his testimony pertinent to the codefendant cannot be separated from testimony which would affect the accused with relation to the witness.

(2) Witnesses shall be privileged to refuse to testify if there is a possibility of self-incrimination, incrimination of a

close relative, foster brothers or sisters, foster parents, adopted children, spouse, or any other person with family or similar ties whose injury would affect him as his own.

(3) Any person who has a duty to report criminal offenses under the provisions of Article 165, Paragraph 2, Criminal Code, shall not refuse to testify with regard to such offense.

(4) A witness who lawfully exercises his privilege to refuse to testify shall not be heard and the record of his former testimony shall not be admissible as evidence.

#### 7. Article 109. Conduct of Hearings

(1) Witnesses shall be heard individually and normally not in the presence of another witness.

(2) After the identity of a witness and his relationship to the accused is established, the official conducting the hearing shall advise him of his privilege to refuse to testify and if applicable, also of any restriction relative to the hearing and of his duty to testify truthfully and without withholding any facts. He shall further advise the witness of the importance of the testimony with regard to common interests and of the criminal consequences for perjury.

(3) Prior to the hearing the official shall interview the witness with regard to his attitudes toward the case and the parties involved, and if necessary, with regard to any other factors necessary to establish the credibility of the witness.

Article 110

(1) The official conducting the hearing shall open the hearing by asking the witness to relate all that he knows about the case and to state the source of the information provided. The testimony of the witness will be recorded in the first person and shall be verbatim insofar as possible.

(2) If the official conducting the hearing is of the opinion that the testimony is not sufficiently clear or complete, or contains discrepancies, he may question the witness in order to verify, supplement, or clarify the facts. Leading questions shall not be permitted. If required, questions and replies shall be recorded verbatim.

(3) If the hearing is conducted for the purpose of establishing the identity of a person or a thing, the official conducting the hearing shall ask the witness to describe such person or thing. Only then shall the witness be confronted with the person or thing, generally among several other persons or things of the same kind.

(4) If verification of handwriting is necessary, the official conducting the hearing may request the witness to write the necessary number of words.

(5) Witnesses shall be allowed to consult written notes before replying; these notes however, must be shown to the official conducting the hearing if he so desires; such action shall be noted in the record.

Article 111

If the testimony of a witness differs materially from the testimony of other witnesses or of the accused and the discrepancies cannot be otherwise resolved, a face to face confrontation is authorized.

Article 112

With the exception of the records of trial and appellate proceedings and proceedings in open court, after the conclusion of a hearing, a witness shall be afforded an opportunity to read the record or have it read to him, if he so requests; the witness shall have the right to request additions or corrections to the record in accord with his replies. All witnesses shall be advised of this right.

Article 113. Compensation

(1) Witnesses shall be entitled to compensation for expenses and lost wages. A claim for compensation shall be void, if not submitted within three days after the hearing or after the day that notice of cancellation of hearing has been received; witnesses shall be notified of this limitation.

(2) The amount of compensation shall be determined by the official conducting the hearing and in court proceedings by the president of the court.

Section 3. ExpertsArticle 114. Appointment

If expert knowledge is necessary to clarify circumstances relevant to a criminal proceeding, two experts shall be appointed.



If the circumstances requiring clarification are of lesser importance or if the case cannot be delayed, the appointment of one expert shall be sufficient. A decision to this effect shall be made by the authority appointing experts.

(2) If warranted, a valid medical certificate shall be accepted in lieu of testimony by a medical expert.

Article 115

(1) Generally, experts shall be appointed from the rosters established for the field involved, and in the sphere of military law, from rosters of qualified persons on active duty in the armed forces. If such experts are not available or the case cannot be delayed, or the case requires additional specialized knowledge, additional experts may be appointed.

(2) Only persons registered on a permanent roster for the professional field or persons professionally engaged in such field shall serve as experts to clarify circumstances relevant to criminal proceedings.

Article 116

(1) The provisions of Article 25, Paragraph 1, shall apply to experts where applicable.

(2) A physician attending an deceased prior to his death shall not be appointed to serve as expert for the purpose of examination and autopsy.

Article 117

Summonses served on experts shall inform them of the consequences of failure to appear (Article 74) and of their duty to immediately report anything which could disqualify them from participation in the capacity of expert in the given case.

Article 118. Instruction of Experts

The official conducting the hearing shall advise each expert of his duty to furnish an unbiased opinion based on his specialized knowledge and to keep in secrecy anything learned in his capacity as an expert. He shall further advise him of the importance of his testimony in view of the common interest and of the criminal consequences of perjury.

Article 119. Preparation of Expert Testimony

(1) Expert witnesses shall be furnished upon request the necessary background information. If required for proper discharge of his function, the expert witness may be permitted to review the record or receive the record on loan basis, to attend the hearings of the accused and the witnesses, and ask questions relevant to matters to form the basis of his expert opinion. The expert witness may also recommend an examination of circumstances relevant to the formulation of his expert opinion.

(2) If the expert testimony requires blood tests or similar actions, the accused and the witness shall allow the physician appointed as expert to perform such actions as long as their health is not thereby endangered. The accused and witness shall be advised of this obligation and of the consequences of failure to comply (Article 74).

(3) Expert witnesses shall generally be requested to present their opinions in written form.

Article 120. Hearings

(1) Before opening a hearing, the official conducting the hearing shall request the expert witness to state any reasons which

could disqualify him from the case. If expert testimony has been previously submitted in written form, the official conducting the hearing shall request the expert witness to verify the testimony and this action shall be noted in the record. If expert testimony has not been submitted in written form, the expert witness shall dictate his findings to the record.

(2) If several experts are appointed to render opinions, upon their request they shall be afforded opportunity to communicate with each other. If they concur in their opinions, the joint opinions may be presented by one of the expert witnesses elected by the other appointed experts as their representative. If there is a difference of opinion, each expert shall present his opinion individually.

#### Article 121. Errors in Opinions

If grounds exist to doubt the correctness of an opinion or any question arises with regard to its clarity or completeness, the expert witness shall be asked for further clarification. If the result is still unsatisfactory, a new expert shall be appointed.

#### Article 122. Opinions Rendered by Institutes

A state institute or any other authority of the national administration may be requested to furnish expert testimony in lieu of appointment of expert witnesses; their opinions shall be submitted in written form and indicate the name of the person preparing the findings so that such person can be summoned to testify as expert witness, if required.

#### Article 123. Compensation

(1) Expert witnesses shall be entitled to compensation for expenses and an appropriate fee.

(2) The amount of the fee shall be determined by the official appointing the expert and in court proceedings by the president of the court. Such decisions may be appealed which shall have the effect of suspension.

#### Section 4. Material and Documentary Evidence

##### Article 124

(1) Material evidence refers to objects used in the commission of a criminal offense or subjected to it, and any other objects tending to substantiate the circumstances under investigation, relevant to the detection and determination of the criminal offense and its offender or any tracing action.

(2) Documentary evidence refers to written documents which confirm or repudiate alleged circumstances relevant to the offense or the offender.

##### Article 125

Every person shall have the duty to present or surrender upon the request of the criminal authorities any written document or certified copy thereof or any other object required as evidence which is in his possession. This duty shall not extend to written documents falling into the category exempt under the provisions governing restrictions on hearings unless release from a privilege of secrecy has been obtained (Article 107).

##### Article 126

Documents written in foreign languages must be translated.

Section 5. ExaminationsArticle 127. Purpose

An examination shall be ordered where clarification of circumstances relevant to criminal proceedings requires direct observation; experts shall generally be appointed to perform this duty.

Article 128. Physical Examination

A person must consent to physical examination only if its purpose is to ascertain evidence and consequences of injury inflicted by the criminal offense. If examination is not conducted by a physician, it must be performed by a person of the same sex.

Article 129. Autopsy and Exhumation

(1) If there are grounds to believe that death was caused by a criminal act, the body of the deceased shall be examined and an autopsy performed. The consent of the prosecutor is required for burial of such deceased. The prosecutor shall make this decision in the shortest possible time.

(2) Exhumation may be ordered by the prosecutor and in court proceedings by the president of the court.

Article 130. Mental Observation

(1) Mental observation shall always be conducted by 2 psychiatric specialists.

(2) If mental state cannot be otherwise determined, the court and, in preliminary proceedings, the prosecutor may order the observation of an accused in a public health institution designated

by the president of the court or the prosecutor; if an accused is held in custody observation may be carried out in the special department of the penal institution; in such cases the accused must be represented defense counsel (Article 35). Such decisions may be appealed, which shall have the effect of suspension.

(3) The period of observation of mental state shall not exceed 2 months; within this period findings must be submitted. At the request of the specialists, supported by proper justification, the court and in preliminary proceedings the prosecutor may extend the above period for no more than one month. Decisions granting such extensions may be appealed.

(4) If the findings of the specialists indicate insanity or impaired mental state, they shall also include an opinion regarding the degree of danger of allowing the person concerned to remain at large.

(5) The provisions of Paragraph 2 shall not apply to minor offenses.

#### Article 131

If there are grounds to believe that the key witness in a case has limited capability to perceive and express himself properly, the witness shall be subjected to psychiatric examination by specialists. Observation of the witness under the provisions of Article 130, Paragraph 2, shall not be permitted.

Article 132. Records

The record of examination must present a full and true picture of the subject examined; it should therefore, be accompanied by photographs, drawings, and other aids.

CHAPTER 6. DECISIONS

Article 133. Mode of Decision:

- (1) Unless the law expressly states that the court shall decide the sentence, the case shall be decided by a decision.
- (2) Other criminal authorities shall decide by a decision; unless otherwise stated in the law.

Section 1. Content of Sentence

Article 134

Following the words "In the Name of the Republic" the sentence must include the information listed below:

- (a) The title of the court and first and last names of the judges,
- (b) The date and place of pronouncement of the sentence,
- (c) The first and last names of the accused, date and place of birth, his occupation and address, and any other data necessary to prevent any possibility of mistaken identity, and if the accused is a person subject to military jurisdiction also his rank and unit,
- (d) The finding of guilty or of acquittal, specifying the charge to which applicable,

(e) The justification of the verdict, and

(f) Instructions relevant to appeal.

Article 135

(1) The sentence shall also contain the punishment imposed and cite all the legal provisions on which based or on the grounds of which punishment is waived. The statement pertaining to the sentence must be clearly formulated to eliminate any doubt as to the manner of its execution.

(2) If a sentence may be suspended, the sentence shall also contain a statement indicating if suspension has been granted and under what conditions.

Article 136

A sentence of acquittal must cite the specific grounds of Article 242 on which that finding is based.

Article 137

(1) If a trial terminates in a sentence, the sentence shall also contain statements regarding

(a) Any claim of the injured party for compensation, submitted on time,

(b) Any corrective measure decided upon in the proceedings,

(c) Any guaranty of a participant decided upon in the proceedings.

(2) Sentences of military courts shall also contain a decision determining if the action of the accused officer of the armed forces



constitutes conduct unbecoming an officer and is detrimental to the prestige and honor of the service of which he is a member; such decisions shall not be required if deprivation of rank is made a part of the sentence.

#### Article 138

(1) Any offense upon which a finding of guilty is pronounced shall be identified not only by the legal title and appropriate legal provisions, but also by place, time and manner of commission, and any other data necessary to prevent any future mistakes in identification. Furthermore, all pertinent legal provisions, including the provision on the basis of which the punishment is imposed, shall be cited.

(2) The justification shall briefly but clearly explain which circumstances the court considered proven and the evidence upon which that opinion is based, which circumstances in view of the evidence presented the court are considered irrelevant or doubtful, the legal considerations applied to the evaluation of the evidence, and the reasons for excluding further evidence. The justification shall further indicate the court's position on the defense raised and legal considerations employed in evaluating the established circumstances with regard to the application of the appropriate law in questions of guilt and punishment and in any other questions, if the sentence includes additional decisions.

#### Article 139. Deliberation and Voting Procedures

In deliberating a sentence, courts shall give particular attention to whether

(a) The offense of which the person is charged was committed,

- (b) The act has all the elements of a criminal offense,
- (c) The offense was committed by the accused,
- (d) The accused is legally responsible for the offense,
- (e) The offense falls within the purview of the statutes of limitations,
- (f) Whether what type of punishment shall be imposed,
- (g) Whether and what amount of compensation shall be awarded to the injured party, and
- (h) What measures to prevent evasion of justice shall be ordered, in any.

Article 140

(1) No person other than judges and people's assessors present during the proceedings immediately preceding the verdict and the recorder shall be present during deliberation and voting. Action shall be taken in closed session.

(2) A verdict shall require a majority vote. If a majority vote cannot be obtained even by voting separately on each point, the votes least favorable to the accused shall be added to the votes more favorable until a majority vote is reached. If there is a difference of opinion as regards the severity of the suggested vote, the difference shall be resolved by voting.

(3) Each member of the court shall vote, even if his voted recommendation has previously been overruled. When voting to decide punishment, members who have previously voted for acquittal may abstain from voting; their votes shall be added to the votes most favorable to the accused.

(4) Voting shall start with junior judge and in military courts or collegiums with the junior in rank; people's assessors shall precede judges in voting. The president of the court shall vote last.

(5) A special record of the voting shall be prepared (Article 58).

Article 141. Announcement of Sentence

(1) The sentence shall always be announced by the president of the court in the name of the republic.

(2) The full text of the sentence and the significant part of the justification shall be announced together with any instructions pertaining to appeal. The announcement must be in complete agreement with the sentence decided upon.

(3) Announcement shall generally be made immediately after the close of the preceding proceeding; if not feasible, proceedings may be adjourned for no more than 3 days prior to the announcement of the sentence.

Article 142. Preparation of Sentences

(1) Every sentence must be prepared in written form. The written form must be in complete agreement with the sentence as announced.

(2) If the sentence is not prepared in written form during the deliberation, it shall generally be prepared within 5 days after its announcement by the president of the court; the president may, however, assign the responsibility for preparation of the sentence in written form to any of the judges who was member of the court.

(3) If neither the president of the court nor any other member of the court can prepare the written form for reasons which would cause prolonged delay, the sentence may be prepared at the direction of the president of the court by a judge who was not a member of the court.

(4) The sentence shall be signed by the president of the court and the author. If the president of the court is unable to sign the sentence for reasons which would cause prolonged delay, it shall be signed for him by a member of the court. The reasons preventing authentication of the sentence by the president of the court shall be noted in the verdict.

#### Article 143. Distribution of Sentence

(1) A copy of the sentence shall be delivered to the accused, the prosecutor, the participants, and the injured party even if they are present when the sentence is announced.

(2) If the accused is represented by defense counsel or legal representative, a copy of the sentence shall always be delivered to them.

(3) If a participant or the injured party have a legal representative, a copy of the sentence shall be delivered to this representative, only, and if they have an agent to the agent only, even if they also have a legal representative.

#### Article 144. Correction of Sentences

(1) The president of the court may at any time by a special directive correct errors in writing and figures or any other discrepancy in the sentence to insure that the final form is in full agreement with the sentence as announced. Corrections may also be made when directed by a higher court.

(2) Copies of the special ruling ordering corrections shall be furnished all persons entitled to receive a copy of the sentence.

(3) Special rulings ordering corrections under Paragraph 1 may be appealed which shall have the effect of suspension.<sup>c</sup>

(4) When such a ruling becomes legally effective, corrections shall be made in the original of the sentence and in all copies, which shall be requested to be returned for this purpose from all the persons to whom previously furnished; the original text must remain legible when corrections are made.

#### Article 145. Corrections of Copies

(1) Discrepancies in copies of sentences shall be corrected by a special ruling of the president of the court to insure full agreement with the original sentence.

(2) A copy of the ruling shall be furnished to all persons entitled to receive copies of the sentence.

(3) Corrections shall be made to all copies of the sentence, which shall be requested to be returned for this purpose from all persons to whom previously furnished; the original text must remain legible when corrections are made.

#### Article 146. Effect of Correction

If the correction of a sentence or correction of a copy of a sentence alters the substance of any decision in the sentence, the time limit for appeal authorized for the prosecutor or the person directly affected by the corrected version shall begin with the time of delivery of the ruling regarding the correction, and if appeal is made from the ruling, from the time the decision is rendered on the appeal.

## Section 2. Decisions

### Article 147. Content of Decisions

Decisions shall contain

- (a) Identification of the authority rendering the decision,
- (b) Date and place of decision,
- (c) Statement citing the provisions of the law applied
- (d) Justification, which will generally specify the circumstances considered as proven, the evidence on which the opinion is based, and the considerations employed in evaluating the established circumstances with regard to application of the appropriate law,
- (e) Instructions regarding appeal.

### Article 148. Announcement of Decision

- (1) Decisions shall be announced by the president of the court, and the prosecutor, or the investigating authority.
- (2) A full statement of the decision, the significant part of the justification, and instructions regarding appeal shall be announced. The announced court decision must be in full agreement with the decisions voted upon.
- (3) Decisions shall be announced immediately after the close of the proceedings preceding it.

### Article 149. Preparation of Decisions

- (1) Every decision must be prepared in written form within 8 days.

(2) Decisions constituting rulings on procedure or admission of evidence, or ordering or preparing court action shall not be required to be in written form.

Article 150. Distribution of Decisions

(1) All persons directly concerned shall be notified of decisions including the person upon whose motion the decision is rendered; in court proceedings the prosecutor shall also be notified. Distribution shall be accomplished by announcement of the decision or delivery of a copy of it.

(2) If a person entitled to notification of a decision is represented by defense counsel or an agent, announcement of the decision in the presence of such person, or if not legally competent, in the presence of his legal representative and/or defense counsel or agent, is sufficient. If the decision is not announced and/or none of the above persons is present, a copy of the decision shall be forwarded to the defense counsel or agent, and in case of a person who is not legally competent and is not represented by either defense counsel or an agent, to the legal representative of such person.

(3) If an accused who is not legally competent is to be notified of a decision from which he may appeal, his defense counsel and legal representative must also be notified. If an accused is in the custody, the defense counsel must be notified even if the accused is legally competent.

(4) The prosecutor shall be notified of the decision, and, if not present at the time the decision is announced, shall be furnished a copy of the decision.

(5) A copy of decisions pertaining to corrective measures shall be always furnished the prosecutor, the person directly affected by the decision, and the person whose motion initiated the action.

Article 151. Substantiation of Decision

The provisions of Section 1 shall apply to decisions when applicable.

Section 3. Execution of Decisions

Article 152. Execution of Sentence

(1) Sentences shall be executed if

- (a) The time limit for appeal has expired,
- (b) If the person entitled to appeal expressly waives the right of appeal or withdraws his appeal,
- (c) If an appeal has been denied, or
- (d) If appeal is not permitted.

(2) Appeals by participants only shall not prevent execution of the remaining parts of the sentence. Similarly, an appeal by one of several accuseds shall not prevent execution of the sentence pertaining to other accuseds.

(3) If, however, the time limit for appeal has expired, and the person entitled to appeal has moved for an extension of the time limit, the sentence shall not be executed pending decision on the motion.



Article 153. Execution of Decisions

- (1) Decisions shall be executed if
  - (a) By law, an appeal is not permitted, or
  - (b) The law permits appeal, but does not state that the appeal has the effect of suspension.
- (2) Decisions from which appeal can be taken and which have the effect of a suspension shall be executed, if
  - (a) The time limit for appeal has expired,
  - (b) The persons entitled to appeal have expressly waived their right of appeal or have withdrawn their appeal,
  - (c) The appeal is denied.
- (3) An appeal, which has the effect of suspension, pertaining to one of several persons or one of several issues contained in the decision shall not prevent execution of other portions of the decision, if they are separable.
- (4) If, however, the time limit for appeals having the effect of suspension has expired, and the person entitled to appeal has moved for an extension of time limit, a decision shall not be executed pending decision of the motion.

CHAPTER 7. APPEAL AND DISPOSITION

Article 154. Admissibility of Appeals and Effects

- (1) An appeal is legal redress against a decision.

(2) Appeals may be used as legal redress against any decision of an investigating authority. Appeals may be used as legal redress against decisions by courts and prosecutors only where expressly permitted by law and only if they decide the case in the first instance. Decisions of the Prosecutor General shall not be appealed.

(2) Appeals shall have the effect of suspension only when expressly provided by the law.

Article 155. Persons Entitled to Appeal

(1) Unless otherwise provided by law, appeals may be made by persons directly affected by the given decision or by the person whose motion initiated the action; prosecutors may appeal on behalf of accuseds from decisions by courts.

(2) Appeals from the decisions regarding custody or protective hospitalization and/or medical treatment on behalf of accuseds may be made by any person authorized to appeal on his behalf.

Article 156. Time Limit and Place for Filing Appeals

(1) Appeals shall be filed with the authority whose decision is being appealed within 3 days (Articles 61 and 62) after announcement of the decision, and where delivery of a copy of the decision is required, within 3 days after receipt of the copy; if the decision is announced both to the person directly affected by it and to his defense counsel or legal representative, the time limit shall begin with the date of the last delivery action.

(2) Time limits for persons authorized to appeals on behalf of accuseds under the provisions of Article 155, Paragraph 2, shall terminate at the same time as the time limit for the accused; time limits for appeals by prosecutors shall however, always be established independently.

Article 157. Waiver and Withdrawal of Appeals

(1) Any person entitled to appeal may expressly waive his right of appeal.

(2) Any person entitled to appeal may withdraw his appeal prior to announcement of decision on the appeal. Appeals filed by prosecutors may be withdrawn by a superior prosecutor.

(3) Appeals filed by an authorized person on behalf of accuseds or by defense counsel or legal representative on behalf of accuseds may be withdrawn only with the express consent of the accused.

(4) Withdrawal of appeals shall be acknowledged by the authority responsible for deciding the appeal; if such authority has not received the appeal, acknowledgement shall be furnished by the authority whose decision is being appealed; in court proceedings the decision will be made by the president of the court.

Article 158. Grounds for Appeal

(1) Appeal from decisions shall be made on the grounds of

(a) Error of any portion thereof, or

(b) Violation of procedural regulations in prior proceedings insofar as such violation might have caused error in any portion of the decision.

(2) Appeals may be based on new circumstances and new evidence.

Article 159. Processing Appeals by the Authority Responsible  
for Deciding Appeals

(1) The investigating authority whose decision is appealed from may grant the appeal, if the resultant change in the original decision does not adversely affect the rights of any other person. If the original decision rendered by the investigating authority requires the approval of the prosecutor, the granting of the appeal shall also require prior approval of the prosecutor.

(2) Prosecutors and courts whose decisions are appealed may approve appeals provided that the resultant change in the original decision does not adversely affect the rights of any other person.

(3) If the time limit for filing an appeal has expired for all authorized persons and the appeal has not been granted under the provisions of Paragraphs 1 and 2, the case shall be submitted for further action,

(a) By the investigating authority to the prosecutor, who has supervisory jurisdiction over the investigating authority, and if the appeal is taken from a decision for which prior approval of such prosecutor had been obtained, to the next higher prosecutor,

(b) By the prosecutor to his immediate superior,

(c) By the president of the court to the next higher court; if warranted in the opinion of the president of the court, a copy of the appeal shall be furnished to the prosecutor and persons who may be directly affected by the decision upon the appeal, if they are not the originators of the appeal.

Article 160. Decision of Appeal by Higher Authority

(1) In deciding appeals, a higher authority shall review

(a) The correctness of all statements in the disputed decision, from which the appellant may appeal,

(b) The proceedings leading to the disputed decision.

(2) If the appeal pertains only to one of several persons or to one of several issues decided by the same decision, the higher authority shall review only the correctness of the statements pertaining to such person or issue and the proceedings leading to that portion of the decision.

Article 161

(1) In deciding an appeal a higher authority shall not take any action altering the decision against the appellant or against the person on whose behalf the appeal was filed.

(2) If the higher authority alters the decision in the favor of the accused for reasons which are also in the favor of any codefendants, the decision pertaining to the codefendant shall also be altered in his favor.

Article 162

(1) A higher authority shall deny an appeal

(a) If appeal is not permitted,

(b) If the appeal has been filed late, or by an unauthorized person, or a person who previously waived his right of appeal or refiled an appeal previously expressly withdrawn, or

(c) If the appeal is groundless.

(2) Appeals shall not be denied on the ground of lateness if filed late by an authorized person due to incorrect instructions received at the time of the announcement of the decision.

#### Article 163

(1) If a higher authority does not deny an appeal, it shall overrule the disputed decision, and

(a) Either decide the case, or

(b) Direct the investigating authority or the prosecutor who originated the disputed decision, or the court that originated the disputed decision, or another court of the same jurisdiction to reexamine the case and to render a new decision; in preparing the new decision the investigating authority, the prosecutor, and the court must follow the legal opinion expressed on the case by the higher authority. The provisions of Article 161, Paragraph 1, shall apply when applicable.

(2) If only a portion of the disputed decision is erroneous, or only a part of the proceedings leading to the decision, and if they can be treated separately, or if the appeal has been taken only from a portion of the decision (Article 160, Paragraph 2) or the proceedings leading to the decision, the higher authority shall limit its decision referred to in Paragraph 1 to that portion only.

#### CHAPTER 8. COSTS OF CRIMINAL PROCEEDINGS

##### Article 164. Costs of Criminal Proceedings Advanced by the State

Costs incident to criminal proceedings and execution of sentences shall be advanced by the state; this credit shall not

extend, however, to costs to be borne by accuseds, participants, injured parties or costs incident to the appointment of defense counsel or agent.

Article 165. Responsibility to Reimburse Costs Advanced by the State

(1) If an accused is lawfully convicted, he shall be responsible for reimbursement of

- (a) Expenses incident to his custody,
- (b) Expenses connected with the execution of sentence of confinement,
- (c) Other expenses advanced by the state in cash.

(2) The daily rate of costs incident to custody and confinement shall be announced by the Minister of Justice in the Official Gazette of the Czechoslovak Republic.

(3) The cash payments referred to in Paragraph 1, Clause (c), shall be announced by the Minister of Justice in the Official Gazette of the Czechoslovak Republic.

Article 166

(1) Any person who files a completely groundless motion for reopening of proceedings shall reimburse the costs advanced by the state in cash (Article 163, Paragraph 3).

(2) Responsibility for reimbursement of costs under the provisions of Paragraph 1 shall not apply to prosecutors or to juvenile authorities.

extend, however, to costs to be borne by accuseds, participants, injured parties or costs incident to the appointment of defense counsel or agent.

Article 165. Responsibility to Reimburse Costs Advanced by the State

(1) If an accused is lawfully convicted, he shall be responsible for reimbursement of

- (a) Expenses incident to his custody,
- (b) Expenses connected with the execution of sentence of confinement,

(c) Other expenses advanced by the state in cash.

(2) The daily rate of costs incident to custody and confinement shall be announced by the Minister of Justice in the Official Gazette of the Czechoslovak Republic.

(3) The cash payments referred to in Paragraph 1, Clause (c), shall be announced by the Minister of Justice in the Official Gazette of the Czechoslovak Republic.

Article 166

(1) Any person who files a completely groundless motion for reopening of proceedings shall reimburse the costs advanced by the state in cash (Article 163, Paragraph 3).

(2) Responsibility for reimbursement of costs under the provisions of Paragraph 1 shall not apply to prosecutors or to juvenile authorities.



Article 167. Responsibility to Reimburse Expenses of the Injured Party

If a claim by the injured party has been granted, in full or in part, the convicted person ordered to satisfy such claim must upon the request of the injured party reimburse the costs incident to the actions required to assert the claim for compensation in criminal proceedings, including the costs of the selected agent.

Article 168. Decisions Regarding Responsibility and Amount of Reimbursement

(1) Responsibility for reimbursement of costs of the injured party and the amount thereof (Article 167) and responsibility for expenses incident to custody (Article 165, Paragraph 1), shall be decided after the sentence enters into effect by the president of the court of primary jurisdiction.

(2) Such decisions may be appealed, which shall have the effect of suspension.

Article 169

If the cost determined in cash payment (Article 165, Paragraph 1, Clause (c); Article 166, Paragraph 1) is not repaid by fee stamps, the president of the court of primary jurisdiction shall decide the responsibility for reimbursement.

Article 170

(1) Responsibility for reimbursement of costs incident to confinement and the amount thereof (Article 165, Paragraph 1) and the amount of reimbursement for costs incident to custody shall be

decided by the administration of the corrective institution in which the convicted person is confined or in which held in custody; the decision shall be based on general administrative provisions.

(2) Decisions under the provisions of Paragraph 1 may be implemented either through administrative or court execution.

#### Article 171

Decisions regarding responsibility for reimbursement of costs incident to confinement and the amount thereof shall be limited by the administration of the corrective institution only to the period during which the convicted person caused through his action lack of coverage of expenses from his wages. This applies to instances when guarding of the prisoner is required which prevents any possibility of his work or when the prisoner refuses to work without sufficient cause.

### PART 2. PRETRIAL PROCEEDINGS

#### CHAPTER 9. INVESTIGATION

##### Section 1. Investigating Authorities

#### Article 172

(1) Investigation shall be conducted by the investigators of the prosecutor's office or of the Ministry of Interior.

(2) To insure maximum objectivity, investigators of the prosecutor's office at the direction of the prosecutor shall also conduct investigations or individual investigative actions, especially interrogation of the accused, even in cases under investigation by other authorities.

(3) The prosecutor shall be responsible for supervision of investigations. He shall have the right to

(a) Issue binding directives to investigating authorities pertaining to the investigation of criminal offenses and searches for offenders whose whereabouts is unknown;

(b) Request from investigating authority for the purpose of verification of cases any records, documents, materials, and reports pertaining to criminal offenses committed;

(c) Take part in investigative actions and personally investigate any case; in doing so he proceeds under the authority of Section 2 of this Part and appeal can be had from his decisions in the manner prescribed for appeals from decisions of investigating authorities;

(d) Return cases to investigating authorities with directives requesting additional investigation;

(e) Set aside unlawful and unjustified decisions and measures of investigating authorities;

(f) Withdraw any case from investigating authorities and refer it to another authority if required in the interest of the fullest and most objective investigation of the case;

(g) Recall an investigator of the prosecutor's office and arrange for recall of other investigators from the case if they violate the law in the course of investigation.

(4) Investigators of the Ministry of Interior shall conduct investigations of cases falling within the jurisdiction of kray courts as courts of primary jurisdiction, and other cases.

(5) Investigations may be also conducted by military commanders, and authorities designated by them, of criminal offenses committed by persons subject to military jurisdiction, provided that maximum punishment for the offense does not exceed confinement for one year.

Article 173

Only the prosecutor shall have the right to take the actions listed below:

- (a) File charges, suspend or interrupt prosecution, and refer or postpone a case;
- (b) Recommend issuance of warrants for arrest and order taking into custody or release from custody;
- (c) Direct that an accused be placed under mental observation in a public health institution or special department of a prison;
- (d) Appoint defense counsels;
- (e) Grant extensions of time limits;
- (f) Order attachment of the property of accused persons;
- (g) Determine funds and objects to be exempt from attachments of the property of accused persons;
- (h) Raise attachments of property of accused persons;
- (i) Order a security bond for the claim of an injured party for damages and limit or set aside such security;
- (j) Decide the return or sale of confiscated item;

(k) Approve burial in cases where under the provisions of Article 129 an autopsy has been performed, and order exhumations;

(l) Recommend extradition of an accused from abroad;

(m) Conduct preliminary proceedings pertaining to extradition to a foreign country.

Article 174

Investigating authorities shall secure the prior approval of the prosecutor for the following actions;

(a) Personal and house searches, seizure of property, and interception of communications. Without prior approval of the prosecutor these actions may be taken only when approval cannot be obtained in advance and the action cannot be delayed; in these instances the investigating authorities must request subsequent approval within 48 hours.

(b) Opening of mail.

Article 175

The prosecutor is authorized to request from the investigating authorities of the Ministry of Interior the performance of such actions that they are authorized to conduct and which are necessary for clarification of the case or determination of identity of the offender.

Section 2. Investigation

Article 176. Initiation of Investigation

Investigation shall be initiated when there are grounds to believe that a criminal offense has been committed.

Article 177

Investigation shall be initiated by a decision of the investigating authority; if investigation is not initiated at the direction of the prosecutor, a copy of the resolution shall be furnished to the prosecutor within 24 hours.

Article 178. Filing of Charges

(1) As soon as sufficient grounds are established to believe that a criminal offense has been committed by a certain person, the investigating authority shall file charges against that person.

(2) The accused shall be advised of the charges within 3 days and no later than prior to his first hearing. The prosecutor shall be furnished a copy of the charges within 24 hours.

Article 179

Statements of charges must include, in addition to the data mentioned in Article 147, clauses (a) through (c) and (e), also the place, time, and any other circumstances under which the offense has been committed insofar as known to the investigating authority, and the grounds for prosecution.

Article 180

If in the course of investigation it becomes evident that the offender committed another offense or that the offense under investigation requires consideration under a different provision of the law, the investigating authority shall proceed in accordance with Article 178.

Article 181

If charges have been preferred for a criminal offense for which the law prescribes the death penalty or confinement for more than 5 years, the accused must have a defense counsel (Article 35).

Article 182. Investigating Procedure

(1) Investigations shall be conducted by the investigating authorities personally. In carrying out investigation they shall proceed in accord with Chapters 1 through 7.

(2) Investigating authorities shall proceed on their own initiative to ascertain in the most expedient and fullest way all the circumstances required for the consideration of the case, especially obtaining all the evidence, whether favorable or unfavorable to the accused.

(3) Confession by the accused shall not relieve the investigating authority of responsibility for investigating and by all possible means verifying all the circumstances in the case. Accused persons shall not be subjected to any coercion to obtain a statement or confession.

Article 183. Termination of Investigations

If the investigating authority considers the investigation closed, it shall advise the accused of the results of investigation, present the records of the investigation for his review, and inform him of his right to propose additional investigation. If the accused proposes new evidence or supplementary material to the evidence gathered, the investigating authority shall act on the proposal; if the investigating authority does not consider supplementary

investigation necessary for the decision of the prosecutor or the court, it shall deny the proposal and issue a statement of justification.

#### Article 184

If an accused is represented by defense counsel, the attorney shall be present at the time the accused is being advised of the results of investigation and shall be afforded an opportunity to review the record and consult the accused if he is in custody, without presence of another person.

#### Article 185

Investigation must be terminated at the latest 2 months after its initiation. An extension for one month may be approved by the prosecutor who has supervisory powers over the investigating authority; a further extension of one month may be granted by the kraj prosecutor. Any further extension shall require the approval of the Prosecutor General.

#### Article 186 Appeal from Decisions of Investigating Authorities

An accused may appeal all decisions of investigating authorities (Article 154 et al.) Appeals must be submitted to the prosecutor within 24 hours.

#### Article 187

An accused shall have the right, at any time during the investigation to request the prosecutor to eliminate any delays in the investigation or correct the actions of the investigating authority. No time limitations shall be established for such requests. Such requests must be presented immediately to the prosecutor who shall act upon the request without delay.



Article 188. Presentation of the Case to Prosecutor

(1) Upon completion of the investigation, the investigating authority shall transmit the records together with a proposal for final action immediately to the prosecutor.

(2) If the investigating authority ascertains that the case under consideration does not constitute sufficient grounds for charging a criminal offense or a minor offense, or if the offense committed resulted in very minor damage to society, it shall refer the case together with an accompanying statement to the prosecutor. If the prosecutor does not find reasons for taking any other measure, the statement shall be set aside. The same action shall be taken by the prosecutor in cases directly presented to him.

Section 3. Decision of the Prosecutor in Pretrial Proceedings

Charges

Article 189. Charges

If the pretrial proceedings provide sufficient cause for the trial of the accused by the court, the prosecutor shall prefer charges.

Article 190

Charges shall be preferred only for the offense cited in the accusation; otherwise the prosecutor shall return the case to the investigating authority for the purpose of preparing new charges and anew investigation, or he shall perform such actions personally.

Article 191

(1) Charges must include

(a) Identification of the prosecutor and the date the charges are preferred.

(b) The first and last names of the accused, the date and place of his birth, his occupation and address, and any other information serving to eliminate any possibility of mistaken identity, and if the accused is a person subject to military jurisdiction, also the rank of the accused and his unit.

(c) Specification of the charges defining precisely the offense for which the accused is to be tried by stating the place, time, and manner of commission, and any other information required to eliminate the possibility of confusion with another offense and to provide a basis for the determination of a sentence; the charge shall further define the offense by its legal title and cite the pertinent law.

(d) The justification of the charges which must include a description of the transaction together with the evidence upon which the description is based, the opinion of the prosecutor specifying the points on the basis of which he considers the defense not valid or insufficient, as well as the provisions of the law deemed by the prosecutor to apply to the circumstances.

(2) The charges shall have attached a list of the evidence proposed to be presented during the principal proceedings, if such list is not incorporated into the accusation, and all documents and inclosures prepared by the investigating authority.

#### Article 192

(1) The prosecutor shall dismiss criminal proceedings, if

(a) It is proved beyond a reasonable doubt that the offense for which criminal proceedings are initiated was not committed,

(b) The action is neither a criminal offense nor a minor offense,

(c) If it cannot be proved beyond reasonable doubt that the offense was committed by the accused,

(d) If criminal proceedings are prohibited (Article 6),

(e) If by reason of insanity the accused was not responsible for the commission of the act, or

(f) If the statute of limitations has run.

(2) The prosecutor may quash the criminal proceedings, if

(a) The action is of negligible detrimental consequence to society,

(b) The punishment for the offense would be of no importance in view of a sentence which has been imposed on the accused for another offense or is expected to be imposed, or

(c) The accused has been sufficiently punished for the same offense by organs of a national committee or another authority, or through disciplinary action, or by a foreign court or office.

(2) Decisions to quash criminal proceedings must always be communicated to the accused and the injured party.

#### Article 193. Suspension of Criminal Proceedings

(1) The prosecutor may suspend criminal proceedings, if

(a) The case cannot be sufficiently clarified due to the absence of the accused,

(b) The accused cannot be called to court because of serious illness.

(c) Due to mental disturbance manifested after the commission of the offense, the accused does not have the mental faculty to comprehend the nature of the proceedings,

(d) The accused has been extradited or exiled,

(e) The identity of the accused is not determined.

(2) Before suspending court proceedings, the prosecutor shall take every necessary step required for the successful accomplishment of the criminal proceeding.

(3) When the reason for suspension no longer exists, the prosecutor shall resume the criminal proceeding.

#### Article 194. Referral of Cases

If charges pertain to a minor offense for which the prosecutor considers sufficient, the punishment which may be imposed by the national committee or another authority authorized to dealing with such offense, the prosecutor may refer the case to such authorities unless there are grounds for simultaneous court proceedings for the offense; the same action shall be taken with regard to offenses for which disciplinary penalties exist, if the prosecutor considers such punishment satisfactory.

#### Article 195. Proposal of Corrective Measures

(1) When the legal conditions are present, the prosecutor shall move that the court order protective treatment or corrective education or custody.

(2) Motions under Paragraph 1 may be included in the charges by the prosecutor.

### PART 3 COURT PROCEEDINGS

#### CHAPTER 10. PRELIMINARY ACTION UPON CHARGES

##### Article 196. Subject of Pretrial Proceedings

(1) Charges preferred shall be preliminarily processed by the court, if

(a) The action of the accused is termed a criminal offense for which the law prescribes the death penalty or confinement for more than 2 years,

(b) The accused is in custody,

(c) The case pertains to a minor,

(d) The case pertains to a fugitive.

(2) Cases other than those cited in Paragraph 1 shall be given preliminary hearing in court only if so ordered by the president of the court on the ground that decision is required under Article 199, Paragraph 1, clauses (a) through (d), or Article 199, Paragraph 2.

##### Article 197. Scope of Responsibility for Review

(1) In the preliminary processing of charges the court shall determine on the basis of the record whether

(a) It has jurisdiction over the case,

(b) There are any grounds for quashing or suspending criminal proceedings,

(c) The law applied to the transaction in the charges is correct,

(d) The pretrial proceedings were carried out in accordance with the law, especially observance of the provisions guaranteeing the rights of the accused,

(e) The case is sufficiently clarified and whether the results of the pretrial proceedings warrant the charges.

(2) During the preliminary processing the court shall always review the charges in their entirety, even if the grounds for review may affect only a portion thereof.

#### Article 198. Procedure

(1) Preliminary processing shall be conducted in closed session. The president of the court shall submit a report on the case stipulating the issues which require decision (Article 197)

(2) Prior to the session, the president of the court may, in order to facilitate the decision, interview the accused and obtain clarifying statements.

(3) In such cases evidence relative to the substance of the charges shall not be heard at this stage of the proceedings.

#### Article 199. Decisions

(1) Upon completion of reexamination, the court shall

(a) Refer the case to another court if the offense is not within its jurisdiction,

(b) Suspend the criminal proceedings upon ascertaining that the circumstances cited in Article 193, Paragraph 1, clauses (a) through (d), exist,

(c) Quash the criminal proceedings under the circumstances cited in Article 192 Paragraph 1,

(d) Return the case to the prosecutor for additional action if required to correct deficiencies in preliminary actions or for clarification of the case, or

(e) Accept the charges.

(2) The court may also quash criminal proceedings if the circumstances cited in Article 192, Paragraph 2, exist or may refer the case if the circumstances cited in Article 194 exist and the court considers such action satisfactory.

(3) The prosecutor may appeal from decisions under Paragraph 1, clauses (a) through (d), and Paragraph 2, which shall have, with the exception of the suspension of criminal proceedings, the effect of suspension.

#### Article 200

A case shall not be referred to another court when the case was assigned to the court under the provisions of Article 199 Paragraph 1, clause (a), by a higher court, unless the matter of the case relative to jurisdiction has changed substantially in the meantime.

#### Article 201

Courts may dismiss cases for under the provisions of Article 192, Paragraph 1, clause (c), only after the prosecutor to whom the charge has been returned in accordance with Article 199, Paragraph 1, clause (d), for additional information has resubmitted the charges and sufficient grounds for charges against the accused are still not present.

Article 202

When in the opinion of the court the proper legal procedure requires that the offense charged be tried under a different provision of the law than that on which the charge is submitted, the bill of charges shall be returned to the prosecutor for revision if due to the difference in legal opinions the case should be further clarified with regard to additional possibilities for the defense. If additional information is not required for the consideration of the case, the court shall make a note of the possibility of different legal considerations in its statement of acceptance of the charges.

Article 203

(1) If the court returns the case to the prosecutor for revision, it shall include in its statement directives for completion of the pretrial proceedings and note the circumstances which require further clarification and/or further steps to be taken.

(2) When a decision to return a case to the prosecutor for revision becomes effective, the case shall revert to the status of pretrial proceedings.

(3) Revision shall be made within a month following the effective date of the court decision. The time limit may be extended only by a prosecutor of superior instance.

Article 204

(1) If the court decides to accept an accusation, it shall at the same time decide upon the measures required to insure the successful execution of the principal proceedings; it shall further



decide if the presence of the prosecutor at the trial is mandatory, if the accused must be represented by defense counsel, and whether the trial may be conducted in the absence of the accused (Article 217, Paragraph 4).

(2) If required, the court shall also decide to separate a case from joint proceedings or to include a case in joint proceedings and the scope of evidence to be presented in the principal proceedings.

#### Article 205

During the preliminary consideration of the charges, the court shall also decide whether to maintain the accused in custody.

#### Article 206. New Preliminary Processing of Charges

(1) If the prosecutor resubmits the charges returned to him by the court, a new preliminary consideration of the charges shall be made in accord with the provisions of Article 196.

(2) The same provisions shall also govern the reconsideration of the charges by the courts of referral cited in Article 199, Paragraph 1, clause (a).

#### Article 207. Effect of Acceptance of Charges

Immediately upon acceptance of the charges by the court, the court shall decide all questions pertaining to procedure; the court, without awaiting any motions, shall make all decisions and take all measures required for handling the charges, trying the case, and rendering a final decision.

Article 208

(1) If the prosecutor withdraws the charges prior to acceptance by the court; and in cases where no preliminary consideration of the charges is made prior to the initiation of the principal proceedings, the case shall revert to the status of pretrial proceedings.

(2) A statement of withdrawal by the prosecutor after acceptance of the charges by the court, and in cases where the charges receive no preliminary consideration by the court after the initiation of the trial (Article 220), shall have no effect and shall not relieve the court of responsibility to rule upon the charges.

## CHAPTER 11. TRIAL

Section 1. Preparation for TrialArticle 209. Delivery of Accusation

(1) Charges accepted after preliminary consideration by the court or which have not required any preliminary consideration shall be furnished the accused and his defense counsel, and if the accused is not legally competent, then to his legal representative, by the president of the court. When the charges include a recommendation that property of persons other than the accused be attached the president of the court shall furnish copies to such persons. To the charges shall be appended a summary of the evidence unless this has been incorporated in the charges proper. If the charges have been considered preliminarily a copy of the court decision of acceptance shall be appended.

(2) The persons to whom the charges are delivered shall at the same time be advised that the court must be informed of any recommendations for further evidence to be presented at the trial together with the circumstances which the evidence is intended to elucidate.

(3) The charges must be furnished no later than the time of summons to the trial or notification thereof.

#### Article 210. Trial Procedure

(1) Trials shall be prepared by the president of the court in such a way as to ensure a termination of the trial in one session if possible.

(2) If recommendations for further evidence are received prior to the trial, the president of the court shall ensure that such evidence, if admissible, is available for the trial.

(3) If he deems it necessary for the proper preparation of the trial, the president of the court may ask the accused whether he desires to make any further statements or recommendations.

#### Article 211. Alternate Judges

(1) If a trial is expected to be of long duration, the president of the court shall arrange for the presence of one or 2 alternate judges.

(2) Alternate judges shall have the duties of members of the court in principal proceedings. They are authorized to question the accused and request clarification. However, they shall participate in the deliberation and voting only if they are taking the place of a judge excluded from further participation in the trial.

for cause. Judges replaced during the trial by alternates shall be excluded from further participation in the trial.

#### Article 212. Principal Proceedings

(1) The date of the trial shall be established by the president of the court in such a manner as to allow the accused and his defense counsel a minimum of 5 days following notification of trial for preparation and the same period insofar as possible also for any other person summoned for the trial or notified of the trial (article 213). This period may be curtailed only with the consent of the accused and his defense counsel, but must in any event be not less than 3 days.

(2) The accused shall be advised in the notification that if he does not appear he may be compelled to appear. If the trial may be conducted in the absence of the accused (Article 217) Paragraph 4), the accused shall be informed of this fact.

#### Article 213

The president of the court shall give notification of the trial to the prosecutor, the legal representative of the accused, defense counsel, and the injured party and participants, or their agents. The injured party shall be advised at the same time that if he does not elect to be present at the trial, his claim shall be decided on the basis of recommendations stated in the record or received by the court prior to the trial.

#### Section 2. Public Trials

#### Article 214

(1) The principal proceedings of trials shall be public.

(2) Admission may be denied only to minors, armed persons not authorized to carry arms by virtue of their office, and persons guilty of provocative and disorderly conduct. Exclusion intended to prevent overcrowding of the court room shall not be deemed a violation of the principle of public sessions.

#### Article 215

(1) The public may be excluded when public proceedings could result in a violation of state, economic, or defense security regulations, interruption of proceedings or for moral reasons. The public may also be excluded from any part of proceedings for these reasons.

(2) Sentence must always be pronounced in open court.

(3) The court shall rule on the exclusion of the public after the hearing of the accused by a decision which shall be announced publicly.

#### Article 216

(1) The court may grant permission to individuals to attend a trial when the public has been excluded.

(2) When requested by the accused, permission shall be granted for 2 of his friends to attend the trial. If there are several accuseds, each shall have the right to select such friends. If the number of such friends should exceed 6 and the accuseds cannot agree on the selection, the selection shall be made by the court. If the public is excluded on grounds of state, economic or defense security, such friends may be only such persons against whose presence the court has no objections.

(3) If the public is excluded on grounds of state, economic, or defense security, the president of the court shall caution all persons present with regard to consequences of disclosure of any information learned during the session to unauthorized persons; he may also prohibit the taking of notes.

### Section 3. Opening the Trial

#### Article 217. Attendance at Trial

(1) All members of the court, the recorder, and generally the prosecutor shall be present continuously during trial.

(2) The presence of the prosecutor during the trial is mandatory in cases

(a) Involving custody

(b) Involving minors

(c) Involving fugitives

(d) If ordered by the court during pretrial consideration of the charges.

(3) Where the presence of the prosecutor is mandatory, the accused shall be represented by defense counsel unless the accused specifically waives such right. The accused shall always be represented by defense counsel if the trial concerns a criminal offense for which the law prescribes the death penalty or confinement exceeding 5 years, or if the court considers the appointment of defense counsel mandatory, especially where there are grounds to believe that the accused does not have the ability to defend himself properly in view of physical or mental defects.

(4) In the absence of the accused, unless the trial concerns a fugitive, trial may be had only in exceptional cases wherein following conditions must be satisfied:

(a) The charges have been properly delivered to the accused, and the accused has been properly summoned to the trial,

(b) The accused has been heard with regard to the offense charged by another authority with criminal jurisdiction (Article 7, Paragraph 1) and all provisions governing the filing of charges and notification of the accused of the results of pretrial proceedings fulfilled,

(c) The court is of the opinion that in view of the slight importance of the case and the clear weight of the evidence, the case may be justly decided in the absence of the accused.

Article 218. Beginning the Trial

(1) Prior to opening proceedings, the president of the court shall announce the case to be considered shall ascertain that the persons summoned or notified of the trial are present, and shall determine their identities, generally from their personal identification cards. Where persons are entitled to delay, the president shall determine if the time limit granted has been observed.

(2) If any of the persons summoned are not present, the court, after having heard the parties present, shall determine if the trial can be had or if it must be adjourned. In such cases, the court shall also decide what steps are required to ensure the presence of the absent person at the trial after adjournment.

Article 219

(1) The president of the court shall request witnesses to stay in a specified room and not to leave it without his permission. He may take steps to prevent communication among witnesses and parties.

(2) The president of the court shall request the injured party to present his claim for damages sustained.

(3) If any person submits a claim obviously without foundation or a claim which cannot be decided during the trial, the court shall by decision exclude that person as injured party in the trial. This decision shall not be binding upon a court in which the claim is submitted under civil procedure.

Article 220. Announcement of the Charges

Upon compliance with the provisions of Articles 218 and 219, the president of the court shall call the court to order and ask the prosecutor to read the charges; if the trial is conducted without the presence of the prosecutor, the charges shall be read by the recorder.

Section 4. Trial Procedure

Article 221

1. The president of the court shall direct the trial.

(2) He shall be responsible for maintaining the dignity and solemnity of proceedings in court, for ensuring that irrelevant matter does not delay the principal proceedings, and seeing that the trial proceeds in the most effective way toward the elucidation of the case.



(3) Any person who feels that any decision of the president has been prejudicial to his interests may request that a ruling be rendered by the court. Such requests and rulings shall be noted in the record.

#### Article 222

(1) The president may order that any person disturbing the order of the court room be removed.

(2) The accused may be ordered removed by the president of the court only after a prior caution, and only for the minimum necessary period. If the accused is granted permission to reenter the courtroom, the president of the court shall advise him of the developments transpiring during his absence in order that the accused may make any pertinent response thereto.

#### Section 5. Evidence

##### Article 223 Statement of the Accused

(1) After the charges have been read, the president of the court shall ask the accused if he understands the charges. If required, he shall explain to the accused in a manner understandable to him the substance of the charges.

(2) The accused must be given an opportunity to describe the offense in narrative manner and to make answer the charges. Only then shall the president of the court question the accused in order to obtain additional information or clarify discrepancies in his statement.

(3) The record of the accused's previous statements may be read only if the trial is conducted in the absence of the accused,

if the accused denies having made such statement, or if a material discrepancy exists between his prior statement and the statement he made at the trial. The discrepancies shall be pointed out to the accused and he shall be asked to explain them.

#### Article 224

If the trial concerns several accuseds, they shall be heard in the order determined by the president of the court. The president may take steps to hear individual offenders in the absence of their codefendants. Each accused shall, however, be advised of the content of the statements made by his codefendants in his absence.

#### Article 225. Presentation of Evidence

The president of the court shall ensure that witnesses shall not be present prior to giving their own testimony to hear the accused or any other testimony. If there are grounds to believe that a witness may not testify truthfully in the presence of the accused, the president may order the accused to leave the courtroom for the duration of the witnesses' testimony. Upon his return to the courtroom, the accused shall be notified of the content of the testimony of the witness in order to contest it.

#### Article 226

If an expert does not submit his opinion in writing or makes changes or additions to his opinion, the president may order the expert to dictate the opinion or addition thereto to the record or to write it into the record.

Article 227

(1) Depositions by witnesses or experts may be read in principal proceedings only in exceptional cases, if the court decides that in view of the lesser significance of the evidence and the clarity of other evidence the personal appearance of the witness is not required, and

(a) The prosecutor and the accused concur, or

(b) Personal appearance by the witness or expert would cause extreme hardship or expense.

(2) Statements by codefendants or witnesses may be read from the record when such persons

(a) Have died, become mentally ill or are missing, or

(b) Have refused in principal proceedings, without valid reason to testify or offer testimony materially contradicting a previous statement.

Article 228

Depositions and reports by authorities, state institutes, and other representatives of the state administration shall always be read.

Article 229

(1) Documentary evidence shall be read during proceedings and the parties shall be entitled to inspect such evidence; if necessary inspection by witnesses and experts shall be permitted.

(2) Other material evidence shall be inspected by the parties and if required by witnesses and the experts.

Article 230

The accused shall be asked if he desires to comment on any evidence presented and his comment shall be recorded.

Article 231. Cooperation of Parties in Examination of Evidence

The prosecutor, accused, and his defense counsel or legal representative, participants, or injured party or his agent may, with the consent of the president of the court, question the witness, generally only after the president of the court has terminated his questioning and the other members of the court have no more questions.

Article 232

After the presentation of the evidence, the president of the court shall inquire if the parties concerned recommend the introduction of any further evidence; the court shall decide such recommendations.

Section 6. Conclusion of Principal ProceedingsArticle 233. Closing Statements

(1) If no recommendations are made for the production of further evidence or if it is ruled that no further evidence be admitted, the president of the court shall announce the evidence concluded and shall proceed to hear the closing statements.

(2) The prosecutor shall first summarize and evaluate the results of the trial and comment on the danger to society inherent in the offense and the possibilities of rehabilitation of the offender. He may comment on the punishment but must not recommend any degree of punishment.

(3) Following the statement by the prosecutor, the injured party or his agent shall present his reasons for his recommendations.

(4) The president of the court shall then recognize the defense counsel and the accused, or if not legally competent his legal representative. If several accuseds are involved, the president shall decide the order of hearing the statements. Following their statements, the participants or the agents of such persons shall be recognized.

(5) If the prosecutor is permitted to speak after statements by defense counsel and the accused are heard, defense counsel and the accused shall be afforded an opportunity to reply.

(6) The president of the court may interrupt closing statements only in the case of irrelevant digressions.

#### Article 234

Upon completion of the closing statements and prior to adjournment for final deliberation the president of the court shall afford the accused an opportunity to make a final statement. During this statement neither the court nor any other persons shall ask additional questions of the accused.

#### Article 235. Procurement of Additional Evidence

(1) If the court finds on the basis of the closing statements, the final statement of the accused, or during the final deliberation that any circumstances require additional clarification, a ruling ordering procurement of additional evidence shall be rendered.

(2) After additional evidence has been obtained and verified, an opportunity must be again afforded for closing statements and

for a final statement by the accused, even though the procurement of the additional evidence does not require an adjournment of the proceedings.

Section 7. Adjournment

Article 236

(1) The court shall adjourn proceedings if

(a) The prescribed time limit for preparation has not been observed (Article 212, Paragraph 1),

(b) The accused is not represented by defense counsel, when representation by defense counsel is mandatory,

(c) Any person whose appearance in person is required for the proceedings does not appear and the whereabouts of such persons are not known,

(d) Evidence which must be verified is not immediately available,

(e) For any other sufficient cause to discontinue the proceedings.

(2) Before the proceedings are adjourned, it shall be ascertained whether the parties intend to submit additional evidence.

(3) When proceedings are resumed, the president of the court shall read the substance of previous proceedings. If required, especially when a period of time has elapsed since adjournment or when there have been changes in the composition of the court, the proceedings shall be recommended from beginning.

## Section 8. Decisions by Courts in Proceedings

### Article 237. Grounds for Decisions

Decisions shall be based only on matters properly before the court and evidence properly introduced in court.

### Article 238

(1) The court may decide only the offense specified in the charge.

(2) If in the course of the proceedings, circumstances are elucidated that point to the commission of another criminal offense, the court shall note these circumstances in the official report and transmit a copy thereof to the prosecutor.

(3) If, however, the new offense thus disclosed is closely related to the offense tried and a joint trial and decision is deemed desirable, the court shall return the case to the prosecutor for revision, unless the prosecutor states in the proceedings that the accused is not to be prosecuted for the new offense.

### Article 239

(1) If during the proceedings the court finds that the offense for which the accused is tried should be considered under provisions of the law other than that specified in the charges, and that due to a difference of legal opinion further clarification of the case is required, especially with respect to the possibility of a new defense, the case shall be returned to the prosecutor for revision. If the case is, however, clearly defined and further verification not required, the court shall decide it irrespective of the legal basis of the offense relied on in the charge.

(2) If the offense is to be tried under a provision of the law requiring a higher degree of punishment than the provision relied on in the charge and the accused has not been advised of the possibility of stricter consideration in accordance with Article 202, the court shall advise the accused of this possibility and grant a postponement of the case for preparation of the defense, unless the accused specifically requests that the case be tried without postponement. The postponement must allow for the time limit for preparatory work stipulated in Article 212.

#### Article 240

(1) Cases returned to the prosecutor for revision under the provisions of Article 238, Paragraph 3, and under Article 239, Paragraph 1, shall revert to the status of pretrial proceedings.

(2) If the prosecutor states that under the provisions of Article 238, Paragraph 3, the new offense shall not be charged, the court shall proceed with the trial on the basis of the original charges. In such case the charges shall not be reconsidered before trial.

(3) Time limit specified in Article 203, Paragraph 3, shall also apply to cases returned under the provisions of Article 238, Paragraph 3, and Article 239, Paragraph 1.

#### Article 241. Sentences

The courts shall pronounce sentences of guilty or of acquittal.

#### Article 242

The court shall dismiss the charges if



(a) The commission of the offense of which the accused is charged has not been proved beyond a reasonable doubt,

(b) The act is neither criminal nor a minor offense,

(c) The commission of the offense by the accused has not been proved beyond a reasonable doubt,

(d) The accused was not criminally responsible for reason of insanity,

(e) The statute of limitations has run.

Article 243

(1) If the court finds grounds to impose measures to prevent evasion of justice against the accused, it may order such measures even without the prior recommendation of the prosecutor.

(2) If in such cases the court deems further evidence necessary which cannot be obtained immediately, it shall reserve decision upon invoking measures to prevent evasion of justice for open session.

(3) The provisions of Paragraph 2 shall also apply to cases where the prosecutor recommends attachment of property of persons other than the accused.

Article 244

(1) If the court dismisses the charges against an accused, it shall refer any claim for damages by an injured party to a civil court.

(2) If the court finds an accused guilty, it shall adjudicate the claim of the injured party for damages against the accused, if

the claim and the amount are substantiated by the findings of the criminal proceedings; otherwise, the court shall refer the injured party to a civil court.

(3) If the court, for any reason, adjudicates only a portion of the damages claimed, it shall refer the injured party to a civil court for adjudication of the remainder of the claim.

(4) Decisions regarding damages to be paid by the accused must identify clearly the person entitled to such payment and the amount awarded. The time limit for compliance shall be 15 days. Where justified, the court may rule that the claim be paid in installments specifying the amount thereof and the conditions of payment.

(5) The court shall not make any decision under the provisions of Paragraphs 1 through 3 if the injured party does not file his claim prior to the initiation of the trial.

#### Article 245. Dismissal of Cases

(1) The court shall dismiss a case if the trial discloses the circumstance mentioned in Article 6.

(2) The court may dismiss a case when the trial discloses the grounds mentioned in Article 192, Paragraph 2.

(3) Decisions under Paragraphs 1 and 2 may also apply to one of the specifications of the charges.

(4) The prosecutor may appeal decisions made under the provisions of Paragraphs 1 and 2 and his appeal shall have the effect of a suspension.

Article 246. Adjournment of Trials

(1) The court shall adjourn a trial if the trial discloses the circumstances mentioned in Article 193, Paragraph 1, clauses (a) through (d).

(2) If the grounds for adjournment cease to exist, the court shall proceed with the trial.

(3) The prosecutor may appeal decisions of the court adjourning trials or denying motions for adjournment.

© Article 247. Referral of Cases

(1) If a court finds that a case is not within its jurisdiction, it shall refer the case to the competent court. The court shall, however, proceed with the case if the lack of jurisdiction is local and the accused does not raise the question of lack of jurisdiction. Similarly the court is responsible for decision of the case if the case should be referred to an inferior court of the same type.

© (2) A court shall not refer a case referred to it by a superior court unless the matter of the case affecting jurisdiction has changed in the interim.

Section 9. Decision of Courts Outside Trial ProceedingsArticle 248

(1) Even in cases where charges have been accepted by the court, the court, in closed session,

(a) Shall dismiss the case if any of the circumstances mentioned in Article 6 appear or are disclosed outside of trial proceedings,

(b) Shall adjourn the trial if the circumstances mentioned in Article 193, Paragraph 1, clause (a) through (d) appear or are disclosed outside of trial proceedings.

(2) The prosecutor may appeal from decisions under Paragraph 1 which action shall have the effect of suspension regarding dismissal of the case.

## CHAPTER 12. PUBLIC SESSIONS

### Article 249. Preparation of Public Hearings

(1) The president of the court shall be responsible for preparing public hearings in such a manner that the proceeding may be concluded within one session. To this end he shall provide everything required for the successful conduct of the public session, particularly the availability of the evidence to be produced and examined during the session.

(2) The president of the court shall be responsible for summoning those persons whose personal appearance is mandatory at the public hearing.

(3) The president of the court shall give notification of the public hearing to the prosecutor, the person upon whose motion the public hearing is convened, and the persons who may be directly affected by the decision, unless summoned under the provisions of Paragraph 2; he shall further notify their defense counsel or agents or legal representatives; summonses or notifications shall be accompanied by a copy of the motion originating the public hearing.

(4) The president of the court shall establish the date of the hearing so as to allow at least 3 days for preparations for the person upon whose motion the public hearing is convened and

the person who may be directly affected by the decision following delivery of the notification. This time limit shall be shortened only with the consent of the person in whose interest the time limit is established.

Article 250. Attendance at Public Sessions

(1) Public sessions shall be conducted with the continuous presence of all members of the court and the recorder.

(2) Unless otherwise provided by law, personal appearance by the prosecutor and defense counsel shall not be required.

Article 251. Procedure in Public Sessions

(1) After a public session had been opened, the moving party shall present his motion; if he is not present, the motion shall be read by the president of the court from the record. If a public session is conducted without a motion by the person so entitled, the president of the court shall state the substance of the case. This shall be followed by statements by any persons who may be directly affected by the decision.

(2) Immediately thereafter evidence shall be produced. The provisions of Articles 223 through 226 and 228 through 230 will apply in considering the evidence.

(3) Upon completion of evidence, the president of the court shall call for final statements. If the accused is the person who may be directly affected by the decision, he shall be afforded opportunity to speak last.

(4) After hearing the closing statements the court shall adjourn for final deliberation. The provisions of Article 235 shall apply where applicable.

(5) The decision of the court shall always be announced publicly.

Article 252. Grounds for Decisions

In deciding a case in public session the court shall consider only the evidence presented at that public session.

Article 253. Adjournment of Public Sessions

(1) Courts shall adjourn public session for sufficient cause, especially

(a) If any person whose personal appearance at the public session is mandatory is not present and his whereabouts is not immediately known,

(b) If in the course of the public session it becomes evident that additional evidence, not immediately available, is required.

(2) In reopening an adjourned public sessions the president of the court shall state the substance of previous proceedings. When necessary, especially when a period of time has elapsed since adjournment or when the composition of the court has been altered, a new session shall be initiated.

Article 254. Additional Provisions Applicable to Principal Proceedings

The provisions of Articles 214 through 216, 218, 219, 221, and 222 shall apply to the public and the opening and procedures of public sessions.

Article 255. Taking Into Custody and Measures to Prevent Evasion of Justice

(1) Unless the court reserves the right to decide measures to prevent evasion of justice or taking into custody under the provisions of Article 243, Paragraphs 2 and 3, it shall rule on such measures in public hearings only when moved by the prosecutor.

(2) In proceedings relating to measures to prevent evasion of justice the accused must be represented by defense counsel (Article 35).

(3) Decisions relating to measures to prevent evasion of justice or custody and shall have the effect of suspension.

CHAPTER 13. CLOSED HEARINGS

Article 256

Unless the law specifically provides that a court shall render a given decision in principal or public sessions, the court shall make that decision in a closed session.

Article 257

(1) The president of the court shall be responsible for preparing closed sessions in such a manner as to enable the case to be concluded in one session. For this purpose he shall ensure that all steps be taken for the successful conduct of the closed hearing, especially verification of evidence.

(2) The president of the court shall give notification of closed hearings to the prosecutor.

Article 258

Closed hearings shall be conducted with the continuous presence of all members of the court and the recorder; the presence of the prosecutor at closed hearing is not required. Other persons are excluded from participating in closed sessions.

Article 259

(1) If verification of evidence is required during a closed hearing, it shall be verified by reading from the record and other documents.

(2) Prior to adjournment of the court for final deliberation, the president of the court shall call upon the prosecutor, if present, to comment on the closing statements or motions.

(3) The decision of the court shall always be announced.

Article 260

Closed sessions shall be adjourned by court only for sufficient cause.

CHAPTER 14. APPEALS AND PROCEDURES FOR APPEAL

Article 261. Admissibility and Effect

(1) The legal redress for erroneous decisions of courts of primary jurisdiction shall be appeal.

(2) Appeals shall have the effect of suspension.



Article 262. Persons Entitled to Appeal

(1) A decision may be contested by appeal

(a) By the prosecutor for error in any of the statements,

(b) By the accused for error in a sentence which affects him adversely,

(c) By a participant for error in a sentence which affects him adversely.

(2) Persons entitled to appeal decisions for error in any of the statements may also appeal on grounds of violation of the laws governing pretrial proceedings insofar as such violation might have resulted in an erroneous decision.

Article 263

(1) Appeals adverse to accuseds shall be made only by the prosecutor.

(2) Appeals in favor of accuseds may be made by the prosecutor, blood relatives of the accused -- foster brother or sister, foster parent or adopted child, or spouse. The prosecutor may appeal against the wish of the accused.

Article 264. Time Limits

(1) Appeals shall be submitted to the court whose decision is contested within 8 days (Article 61 and 62) after delivery of the copy of the decision.

(2) If a decision is delivered to an accused and his defense counsel or legal representatives (Article 143), the time limit shall begin to run with the date of the latest delivery.

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(3) For the persons cited in Article 263, with the exception of the prosecutor, the time limit for appeal shall terminate on the same date as that for the accused.

Article 265. Content of Appeals

(1) Appeals by prosecutors and appeals submitted on behalf of accused persons by defense counsel shall also be within the time limit stipulated in Article 264 and shall be written in such a manner as to make clear which portion of the decision is being contested and what defects of the decision or pretrial proceedings are appealed from.

(2) Appeals may be grounded on the introduction of new circumstances and new evidence.

Article 266. Waiver of Right to Appeal

Any person entitled to appeal may expressly waive his right to appeal. Any statement by which a person waives his right of appeal made prior to announcement of the decision to which the statement pertains shall be void.

Article 267. Withdrawal of Appeals

(1) Any person may withdraw an appeal already filed through an express statement to that effect at any time prior to the time the court recesses for final deliberation.

(2) Appeals by prosecutors may also be withdrawn by a superior prosecutor.

(3) Appeals made on behalf of an accused by his defense counsel, legal representative, or any other authorized person may be withdrawn only with the express approval of the accused.

(4) The president of the appellate court shall acknowledge withdrawals of appeals by a ruling, and if the appeal is withdrawn prior to the submission of the case to the appellate court, by the president of the court of primary jurisdiction.

Article 268. Proceedings in Courts of Primary Jurisdiction

(1) The president of the court shall deliver a copy of the appeal and if appropriate, a copy of the brief to the other parties. He shall advise them at the same time of their right to file their briefs to the appeal. If they furnish statements, he shall deliver copies thereof to the appellant.

(2) Immediately upon the expiration of the deadline for filing appeals for all persons so entitled, the president of the court shall transmit the documents to the appellate court.

Article 269. The Appellate Court

Appeals from decisions by people's courts shall be decided by the superior kraj court. Appeals from decisions by kraj courts as courts of primary jurisdiction shall be decided by the Supreme Court.

Article 270. Decisions in Closed Sessions

(1) Appellate courts shall deny appeals in closed session if the appeal is submitted late, submitted by an unauthorized person or a person who has waived his right of appeal, or a resubmitted appeal previously withdrawn in the same case.

(2) Lateness shall not be grounds for denying an appeal submitted by a person entitled to appeal if the late filing was caused by erroneous advice by the court.

Article 271

Appellate courts shall, in closed session, set aside the contested sentence and shall dismiss the case if it is found that circumstances exist which were grounds for dismissal of the case in the court of primary jurisdiction (Article 245, Paragraphs 1 and 2).

Article 272

(1) Appellate courts shall, in closed session, dismiss criminal proceedings if the circumstances mentioned in Article 193 Paragraph 1, clauses (a) through (d), arise or are disclosed only after announcement of the decision appealed from.

(2) Appellate courts shall, in closed session, set aside the decision appealed from and shall dismiss criminal proceedings if such action should have been taken by the court of primary jurisdiction (Article 246).

Article 273

Appellate courts shall, in closed session, set aside the sentence appealed from and refer the case to the competent court if it is established that such action should have been taken by the court of primary jurisdiction (Article 247).

Article 274

Appellate courts shall, in closed session, set aside the sentence appealed from and remand the case for a new trial by the court of primary jurisdiction if it is determined that in the principal proceedings before the sentence

- (a) The court was not lawfully convened;
  - (b) A judge disqualified from the case took part in deciding the case,
  - (c) The accused was not represented by defense attorney, when representation by defense counsel was mandatory, or
  - (d) The action was taken in the absence of the accused without any legal grounds,
- (2) The appellate court shall take the same action if it is determined that the accused was not granted adequate time to prepare his defense (Article 212, Paragraph 1).

Article 275

(1) Appellate courts shall, in closed session set aside the sentence appealed from and remand the case for a new trial when this is deemed necessary

• (a) Because of error in the proceedings prior to the sentence, especially if the proceedings violated the provisions guaranteeing proper clarification of the case and the right of defense,

(b) Because of error in the sentence, especially lack of clarity and sufficiency of material evidence, or

(c) Because the basic circumstances of the case would require extensive verification of evidence upon appellate review.

(2) If in order properly to clarify the case the appellate court deems it necessary, it may, in addition to setting aside the sentence, remand the case to the prosecutor for further investigation. Such action shall have the effect provided in Articles 203 and 206.

Article 276. Appellate Proceedings

(1) If an appeal is not decided in closed session, the president of the court shall order an appellate hearing.

(2) The provisions pertaining to principal trial proceedings shall apply to appellate hearings as pertains to admission of the public, procedure, postponement, verification of evidence, and presence of court officers. Prosecutor must be present at appellate hearings. The accused, in appellate hearings, shall be represented by defense counsel in all cases which require defense counsel during trial.

(3) In the absence of an accused held in custody an appellate hearing may be conducted only if the accused expressly waives his right to be present at the appellate hearing. In the absence of an accused who is at large, an appellate hearing may be conducted only if he was timely and properly summoned to the hearing.

Article 277

(1) After opening appellate proceedings, the president of the court or a member of the court designated by him shall read the contested decision; state the substance of the current proceedings; and announce what defects in the decision or pretrial proceedings are the subject of the appeal.

(2) Upon completion of the above, he shall request the parties to present their views. The appellant shall make the first statement.

(3) If the parties are not present or if they so request, their appeal or statement shall be read from the record.

Article 278

If it is deemed necessary to eliminate doubts regarding the correctness and completeness of findings which constitute the basis for the decision of the court of primary jurisdiction, or for clarification of the case, the appellate court may review evidence accepted by the court below and hear further evidence.

Article 279

After the presentation of evidence has been completed, the president of the court shall permit closing arguments. The defense counsel and the accused shall speak last.

o Article 280. Decisions in Appellate Hearings

Appellate courts shall make any of the decisions provided in Articles 270 through 275, if grounds for such decision appear during the appellate hearing.

Article 281

Appellate courts shall dismiss appeals if they are found during the appellate hearing to be groundless.

Article 282

(1) Appellate courts may set aside a contested decision and decide the case itself only if such decision is based on

(a) Material grounds properly established by the court of primary jurisdiction in the contested decision, or

(b) Material grounds established by the appellate court on the basis of evidence presented and verified during the appellate hearing

(2) Appellate courts shall not, however,

(a) Find the accused guilty of an offense of which he was acquitted by the court of primary jurisdiction.

(b) Find the accused guilty of an offense higher than the offense of which he could be found guilty by the court of primary jurisdiction (Article 239),

(c) Impose the death penalty, if not imposed by the court of primary jurisdiction.

(3) If the appellate court does not make its decision under the provisions of Paragraph 1, or if a decision cannot be rendered for any of the reasons mentioned in Paragraph 2, the court shall set aside the decision and remand the case for retrial to the court of primary jurisdiction.

Article 283. Common Provisions Relating to Decisions by Appellate Courts

If an appellate court does not deny an appeal under the provisions of Article 270, it shall be the responsibility of this court to examine the correctness of all the statements in the decision against which appeal can be taken, and the correctness of pretrial proceedings, also taking into consideration any defects which were not made a subject of the appeal.

Article 284

If the appeal contests only a part of a decision pertaining to one of several persons affected by the same decision, the court shall review only the correctness of that portion pertaining to that person and the correctness of the pretrial proceedings in that portion of the decision.



Article 285

If only a part of the contested decision is defective and can be separated from the remainder, the appellate court shall set aside only that portion; if, however, the court sets aside even partially the finding of guilty, it shall simultaneously set aside the sentence, as well as the judgement allowing the injured party's claim for damages and any statement to the effect that the accused through the offense behaved in a manner unbecoming an officer of armed forces based on the finding of guilty.

Article 286

If a decision of a court of primary jurisdiction set aside as a result of an appeal filed on behalf of an accused, the appellate court shall not impose a more severe sentence upon the accused than the sentence imposed by the contested decision.

Article 287

If the basis for an appellate court's decision in favor of one accused also favors a codefendant or participant, the court shall also decide in favor of the codefendant or participant. Similarly the court shall decide in favor of the accused if the basis of a court's decision in favor of a participant also favors the accused.

Article 288

If the appellate court decides to remand a case to the court of primary jurisdiction for retrial, it may at the same time direct that the case be tried by a court of different composition, or that the case be processed and tried by another court of the same kind and same level in the same district.

Article 289. Court Proceedings in Courts of Primary  
Jurisdiction Following Reversal of Decisions

A court to which a case has been remanded for retrial shall be bound by the legal opinion expressed in the decision of the appellate court and shall carry out any procedural measures directed by the appellate court.

Article 290

If the contested decision is set aside only as a result of an appeal filed on behalf of the accused, the court shall not, upon retrial impose a higher sentence than that imposed by the contested decision.

CHAPTER 15. APPEAL ON GROUNDS OF VIOLATION OF LAW OR PROCEDURE

Article 291

(1) Lawful decisions of courts which have violated the law and lawful decisions of courts made on the basis of error in procedure may be appealed by the Prosecutor General or the President of the Supreme Court to the Supreme Court on the ground of violation of law; the Prosecutor General may appeal decisions by prosecutors.

(2) With regard to sentences, appeals on the grounds of violation of the law shall be submitted only where the sentence is manifestly disproportionate to the gravity of the crime.

(3) If the decision mentioned in Paragraph 1 pertains to several persons, an appeal on the ground of violation of the law shall be filed only against that portion of the decision pertaining any of the persons concerned.

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Article 292

(1) Appeals on the ground of violation of the law shall be decided by the Supreme Court in public session in the presence of the Prosecutor General.

(2) If an appeal on the ground of violation of the law is directed against a decision of the Supreme Court or the President of the Supreme Court, it shall be decided by the Supreme Court in plenary session unless the presidium of the Supreme Court has reserved the right to decide the appeal. The presidium and plenary session of the Supreme Court shall decide such cases in closed session in the presence of the Prosecutor General.

(3) Decisions upon appeals on the ground of violation of the law shall not be appealed.

Article 293

(1) The Supreme Court shall review the correctness of all the statements in the contested decision and the pretrial proceedings.

(2) If an appeal on the ground of violation of the law is filed under the provisions of Article 291, Paragraph 3, the Supreme Court shall examine for correctness only those parts of the contested decision which pertain to the person affected by the appeal on the ground of violation of the law and those parts of the pretrial proceedings.

Article 294

If the Supreme Court finds that the law has not been violated, it shall dismiss the appeal on the ground of violation of the law by a ruling with opinion.

Article 295

If the Supreme Court finds that the law has been violated, it shall announce by a decision that in the contested decision, or a portion thereof (Article 291, Paragraph 3), or in the course of the pretrial proceedings, a law has been violated.

Article 296

(1) The decision mentioned in Article 295 shall not disturb the legal effect of the decision to which it applies.

(2) If the law has been violated, however, prejudicially to the accused, the Supreme Court shall simultaneously with the decision mentioned in Article 295 set aside the contested decision, or portion thereof, or the erroneous pretrial proceedings, as well as any decision based on the nullified decision (or portion thereof) insofar as such decision can no longer be considered valid as a consequence of the setting aside of the first decision. If the Supreme Court sets aside a conviction, it shall set aside the entire sentence and any judgment allowing an injured party's claim for damages and any ruling to the effect that the accused through the offense charges had behaved in a manner unbecoming an officer of the armed forces based on the nullified conviction. The provisions of Article 287 shall similarly apply.

(3) If the violation of the law was not prejudicial to the accused the Supreme Court may proceed under the provisions of Paragraph 2, if such action is recommended by the Prosecutor General or the President of the Supreme Court in an appeal on the ground of violation of the law filed within 3 months following the effective date of the contested decision (or portion thereof) and in case of a decision by a court of secondary jurisdiction, within

3 months following the delivery of such decision to the prosecutor, and if the Supreme Court decides the appeal not later than 3 months following its date of filing.

(4) If required by the nature of the case, the Supreme Court

(a) Shall direct the court or prosecutor whose decision is being contested, or another court or prosecutor, to retry the case and render a new decision; in formulating the new decision the court or prosecutor shall be bound by the legal opinion expressed by the Supreme Court;

(b) The Supreme Court shall decide the case.

(3) If, however, the decision has been set aside, the Supreme Court may not

(a) Find the accused guilty of an offense of which he was acquitted by the contested decision or upon which criminal proceedings were dismissed,

(b) Find the accused guilty of a higher offense than the offense of which he could have been convicted by the contested decision,

(c) Impose the death penalty.

(6) If only one part of the contested decision is found to be unlawful and if it can be separated from the others, the Supreme Court shall limit its decision under the provisions of Paragraphs 2 and 5 to such portion only.

Article 297

If the violation of the law consists of absence of a part or incompleteness of a part of the contested decision, the Supreme Court may under the provisions of Article 296, Paragraphs 2 and 3, direct in its decision the court or the prosecutor whose decision it affects, or another court of prosecutor, to furnish appropriate supplementation; in taking supplementary action, the court or prosecutor shall be bound by the legal opinion expressed in the case by the Supreme Court.

~~Article~~ Article 298

(1) If the law has been violated to the prejudice of the accused, the new decision shall not effect any change prejudicial to the accused.

(2) If the law has been violated to the prejudice of the accused, the death of the accused shall be no bar to the proceedings provided above; criminal proceedings shall not in such cases be dismissed because of the death of the accused.

Article 299

If an appeal on the ground of violation of the law is filed against a decision wherein the law has been violated to the prejudice of an accused, the President of the Supreme Court may stay or set aside the execution of the sentence; if the contested decision imposed the death penalty, the President of the Supreme Court shall always stay execution of the sentence.

## CHAPTER 14. REOPENING OF PROCEEDINGS

### Article 300. Conditions .

(1) If criminal proceedings are terminated by a lawful decision or by lawful decision dismissing the criminal prosecution, the same offense may be prosecuted again only when a reopening of proceedings has been approved.

(2) Reopening of proceedings under Paragraph 1 shall be approved

(a) If circumstances or evidence previously unknown to the court are disclosed which could have resulted in a different decision with regard to the guilt of the accused or the claim of the injured party for damages, or if the offense constituted behavior unbecoming an officer of the armed forces, or in view of which the sentence imposed is in manifestly disproportionate to the gravity of the crime.

(b) If it becomes evident in any way that the prosecutor or judge in the original proceedings criminally violated his official duty.

(2) A reopening adverse to the accused shall not be permitted if

(a) The statute of limitations for the offense has run out,

(b) The offense comes under the purview of a decision by the President of the Republic directing a discontinuance of proceedings, or

(c) If the accused has died.

(4) Reopening shall also be denied if the request for reopening of proceedings pertaining to a decision awarding damages to an injured party was not submitted within 5 years after the effective date of the lawful decision.

Article 301

(1) If criminal proceedings against a given person have been dismissed by a ruling of the prosecutor, they may be reopened against the same person for the same offense only if such reopening of proceedings is approved.

(2) Reopening of proceedings under Paragraph 1 shall be approved if

(a) Circumstances or evidence previously unknown to the prosecutor are disclosed, which could afford grounds for preferment of charges, or

(b) It appears in any way that the prosecutor in the original proceedings criminally violated his official duty.

(3) Reopening of proceedings under Paragraph 1 against an accused shall not be permissible if there are present any of the circumstances mentioned in Article 300, Paragraph 3.

Article 302. Persons Entitled to Request

(1) Reopenings shall be approved only upon the motion of an authorized person.

(2) Motions adverse to the accused may be made only by the prosecutor.



(3) Motions favorable to the accused may be made by the accused and any person authorized to file appeals on his behalf. Such motions may be filed even after the death of the accused. Prosecutors and any other persons authorized to appeal on behalf of an accused against his will may file against his will a motion for approval of reopening of proceedings in his favor.

(4) If a court, administration, or any other state organ learns of any circumstances which could constitute grounds for approval of a reopening, it shall be the responsibility of such office to communicate such facts to the prosecutor. If the circumstances warrant a motion for approval of a reopening of proceedings, and the prosecutor does not make such motion himself, he shall be responsible for immediately advising the accused of this circumstance, or if this is not possible, any other person authorized to make the motion.

#### Article 303. Jurisdiction of Courts

(1) Motions for approval of reopening of proceedings limited only to a decision<sup>2</sup> pertaining to an injured party's claim for damages shall be decided by the people's court with jurisdiction over civil cases in the district in which the injured party resides; if the injured party has no residence, by the people's court in the district of which the injured party resides.

(2) In other cases decisions regarding approval of reopenings shall be made by the court that tried the case, and if the proceedings were dismissed by decision of the prosecutor, by the court which had jurisdiction over the charges. Where the decision was rendered by a people's court as a court of primary jurisdiction, but the kraj prosecutor has recommended action by the kraj court

on the basis of new circumstances or evidence pointing to a criminal offense falling within the jurisdiction of the competent kraj court, the decision to grant a reopening shall be made by the kraj court.

Article 304. Proceedings Upon Motions for Reopening

(1) Motions for approval of reopening of proceedings limited to decisions regarding damage claims of injured parties shall be decided by the people's courts in accordance with civil procedure.

(2) In other cases motions for reopening for proceedings shall be decided by the court in public session. If the court finds that the motion for reopening of proceedings is groundless, is filed by an unauthorized person, or is directed only against a decision (or portion thereof) which by law may not be reopened (Articles 300 and 301), it shall deny the motion. Otherwise, motions for reopening shall be approved and the original decision set aside, but only insofar as the motion for reopening is substantiated; if a conviction is set aside, even partially, the entire sentence shall also be set aside as well as any judgement upon an injured party's claim for damages and any determination to the effect that the offense constituted conduct unbecoming an officer of the armed forces based upon the nullified decision. Simultaneously the court shall set aside any decision based on the contested decision which consequently is no longer valid. If the court approves a reopening regarding a conviction and if it deems it necessary, it may together with setting aside the original decision direct that the case be returned to the prosecutor for further investigation. Such decisions shall have the effect provided in Articles 203 and 206.

(3) Motions for reopening, submitted by unauthorized persons, or submitted against decisions (or portions thereof) which do not permit of reopening, or when reopening is prohibited, (Articles 300 and 301) may be denied by courts in closed session.

(4) Appeals may be taken against decisions made under the provisions of Paragraphs 2 and 3, which shall have the effect of suspension.

#### Article 305

If a court approves a reopening in favor of an accused for reasons which are also favorable to any codefendant or participant, it shall also approve a reopening in favor of such codefendant or participant shall also set aside the original decision and any decisions based thereon to the extent provided in Article 304, Paragraph 2, as pertains to such codefendants and participants.

#### Article 306

(1) If a motion for reopening of a trial favorable to a convicted person has been submitted, the court shall stay execution of any death penalty pending decision of the motion; similarly the court may stay the execution of other sentences for the same period.

(2) If during the deliberation of the motion for reopening the convicted person is confined in accordance with the original decision, the court shall also decide simultaneously with its decision approving reopening and setting aside the decision imposing the punishment the question of the custody of the accused.

Article 307. Proceedings After Approval of Reopening

(1) If a reopening of proceedings lawfully approved pertains only to a claim for damages by an injured party and is unrelated to any motion for a pretrial, the new proceedings regarding the claim shall be conducted by the people's court which approved the reopening according to civil procedure.

(2) Upon approval of a reopening of proceedings halted by a prosecutor the proceedings shall be reinstituted.

(3) In other cases, upon approval of reopening, a new trial shall be conducted on the basis of the original charges by the court which approved the motion for reopening, unless it is stipulated that the case be returned to the prosecutor for further investigation (Article 304, Paragraph 2). If the reopening approved affects only one of several offenses for which an aggregate punishment has been imposed or which affects several punishments which are in the relationship mentioned in Article 22, Paragraph 2, of the Criminal Code, and the court rules that the case be returned to the prosecutor for further investigation, the court shall determine, after the decision approving the reopening becomes effective in public session, an appropriate punishment for the remaining offenses. Such decisions may be appealed, which shall have the effect of suspension.

Article 308

If reopening is approved only in favor of the accused,

(a) The time elapsing between the effective date of the original decision and the effective date of the decision approving the reopening shall not be counted into the running of the statute of limitations,

(b) The new decision shall not impose a sentence more severe than that imposed in the original decision, and if in the original decision an aggregate sentence has been imposed or several punishments which are in the relationship mentioned in Article 22, Paragraph 2, Criminal Code, the appropriate punishment determined under the provisions of Article 307, Paragraph 3, shall not together with any punishment which may be imposed for the offense which is the subject of the reopening exceed the punishment imposed by the original decision

(c) The death of the accused shall not bar further proceedings and criminal proceedings shall not be dismissed by reason of the death of the accused.

#### CHAPTER 18. SPECIAL CATEGORIES

##### Article 309. General Provisions

Unless otherwise stipulated in this Chapter, the appropriate provisions of this law shall apply to all special category proceedings.

##### Section 1. Actions Against Minors

##### Article 310. Jurisdiction

(1) If required in the interest of the minor, the competent court shall refer the case to the court in the district in which the minor resides or to the court at which for other reasons the trial of the minor would be most convenient.

(2) Joint proceedings against a minor and a person over 18 years of age shall be conducted only if serious grounds warrant

such action. The provisions of this chapter shall govern joint proceedings involving a minor.

(3) Cases of minors shall be handled insofar as possible by judges who have had experience in youth education.

Article 311. Ascertaining the Background of the Minor

In proceedings affecting a minor, the degree of the mental and moral development of the minor, his character, background, circumstances, and environment in which he has lived and been brought up, his behavior following the commission of the offense, and circumstances pertinent to the determination of corrective measures shall be thoroughly investigated, especially to provide a basis for decisions relating to taking a minor into protective custody. Determination of the background of the minor shall be generally entrusted to competent youth authorities:

Article 312. Taking Into Custody

Minors shall be taken into custody only if the purpose of the custody cannot be met otherwise.

Article 313. Mandatory Representation by Counsel

(1) During investigation, minors shall be represented by defense counsel (Article 35) if in custody.

(2) In principal proceedings, appellate proceedings, and public sessions, the minors shall be represented by defense counsel (Article 35) at all times and any waiver by him of such representation (Article 217, Paragraph 2) shall be invalid.

Article 314. Dismissal of Criminal Proceedings

The prosecutor may dismiss criminal proceedings when any of the reasons exist for which the court could dismiss the case.

Article 315. Preliminary Consideration of the Charges

(1) In proceedings affecting a minor, preliminary consideration shall always be given the charges.

(2) If the court accepts the charges against a minor, a copy of the charges shall be furnished by the president of the court to the youth authorities.

Article 316. Principal and Appellate Proceedings and Public Sessions

(1) Principal proceedings shall not be conducted in the absence of the minor.

(2) Principal and appellate proceedings and public sessions against minors

(a) Must be attended by the prosecutor,

(b) The court may exclude the public from hearings if such action should be favorable to the accused,

(c) The representative of the youth authority may make recommendations and question witnesses; he shall be entitled to present a closing argument following the argument of the minor,

(d) The president of the court may order the minor to leave the courtroom during principal or appellate proceedings or during public session, if there is any possibility that his presence during such time could have an adverse effect on his moral development;

after the return of the minor to the courtroom the president of the court shall inform the minor of the substance of proceedings in his absence and shall afford him an opportunity to make a pertinent response.

Article 317. Announcement of the Decision

(1) A copy of each decision shall always be delivered also to the youth authorities.

(2) If the youth authority representative is not present when the decision of the court, prosecutor, or investigating authority was announced, a copy of the decision shall be delivered to him if the decision is appealable or if by such decision criminal proceedings are dismissed, adjourned, or the case is referred.

Article 318. Persons Authorized to Move for Legal Redress

(1) Motions for legal redress in favor of the minor may be submitted, even against his will, also by youth authorities; the time limit for filing such motions run independently.

(2) Appeals in favor of the minor may be also submitted by close relatives, brothers or sisters, foster parents, or spouse; the time limit for appeal shall expire on the same date as the time limit for appeal by the minor himself.

Article 319. Sentence of Corrective Education (Rehabilitation)

(1) Except in those cases where the court reserves a right to decide questions of corrective education under the provisions of Article 243, Paragraph 2, the court may order corrective education in public session only if recommended by the prosecutor.



(2) Decisions regarding corrective education may be appealed which shall have the effect of suspension.

Article 320. Further Provisions

(1) The provisions of this section shall not be applied

(a) To offenses committed by minors prior to attaining the age of 18 years or immediately thereafter, if the law prescribes for the offense committed after attaining the age of 18 years the same or a higher punishment, or

(b) If the charges are preferred after the accused has attained the age of 19 years.

(2) The provisions of Article 310, Paragraph 1, Article 315, Paragraph 2, Article 316, Paragraph 3, clause (c), Article 317 and 318, Paragraph 1, shall not apply in the sphere of military law.

Section 2. Proceedings Against Fugitives

Article 321

(1) If a person against whom criminal proceedings are instituted has evaded prosecution either by fleeing abroad or going into hiding, the proceedings may be conducted as against fugitives.

(2) Proceedings against fugitives shall not be employed against a minor.

Article 322

In trials of fugitives, the accused must be represented by defense counsel (Article 35), who shall exercise the same rights as the accused.

Article 323

In proceedings against fugitives, charges (Articles 178 and 180) shall be preferred only when ordered by the prosecutor.

Article 324

Court proceedings against fugitives shall be conducted only upon the initiative of the prosecutor; his recommendation may be incorporation in the charges. The charges must always be considered preliminarily.

Article 325

All written communications destined for the accused shall be sent to his defense counsel. Summonses to principal and appellate proceedings shall also be publicly announced in the prescribed manner.

Section 3. Proceedings under Martial LawArticle 326. Proclamation of Martial Law

(1) The government is empowered to proclaim martial law whenever any of the following criminal offenses are prevalent to a dangerous degree: terrorism (Article 80, Clause (a), Criminal Code), partisan activity (Article 84, Criminal Code), sabotage (Article 85, Criminal Code), unauthorized arming (Articles 120 and 121, Criminal Code), assault of public authorities (Article 154, Criminal Code), assault of public officials (Article 177, Criminal Code), general danger (Articles 190 and 191, Criminal Code), murder (Article 216, Criminal Code), robbery (Article 232, Criminal Code), theft of socialist owned property (Article 245, Criminal Code), desertion (Articles 273 and 274, Criminal Code), mutiny

(Article 276, Criminal Code), violence to the population (Article 299, Criminal Code). If the commission of such offenses is to be prevented only in a certain manner, the state of martial law shall be limited to such cases.

(2) The state of martial law shall be limited to the territory or to units of the armed forces in accord with the need.

(3) The state of martial law shall be proclaimed in all communities and all units involved and in such a manner as to be made generally known as soon as possible. The offenses covered by the martial law shall be contained in the proclamation as well as the territory and units to which applicable. Furthermore, the proclamation shall caution that anyone who commits any such offense shall be tried under martial law procedure and punished by the death penalty.

(4) Under the conditions cited in Article 38 of the Constitution, the government may restrict freedom of movement, privacy of homes and the mail, and prohibit loitering or assembly in public places.

#### Article 327. Effect of Martial Law

(1) After proclamation of martial law, anyone committing one of the stipulated offenses shall be punished by death. If the execution of the death penalty upon one or several convicted persons provides sufficient public example for the restoration of order, the court may on the grounds of serious mitigating circumstances impose in lieu of the death penalty a sentence of confinement from 15 to 25 years.

(2) If after the proclamation of martial law, any of the stipulated offenses is committed by a minor, he shall be punished by confinement from 5 to 20 years.

Article 328. Proceedings Under Martial Law

(1) Proceedings under martial law shall affect only those offenses for which the martial law has been proclaimed and only if committed after the proclamation of the martial law and in the territory or in the unit under martial law.

(2) Proceedings under martial law shall not be conducted against a person not apprehended in the commission of the crime or who cannot be proven guilty without delay, or who is seriously ill or pregnant; in such cases the general provisions governing procedure shall apply.

Article 329

(1) Proceedings under martial law shall initiated upon the recommendation of the okres prosecutor. Such recommendation shall serve as charges.

(2) Proceedings under martial law shall be conducted by the people's courts in the manner prescribed for principal proceedings, without pretrial processing of the charges. The entire trial must be concluded with 72 hours following the appearance of the accused in court.

(3) Accuseds shall be represented by defense counsel in trials under martial law (Article 35).

Article 330

In the case of joint proceedings against several accuseds, action against one accused shall not be delayed by search for other accuseds.

Article 331

(1) The court shall find the accused guilty only by a unanimous vote of all members of the court. If the trial cannot be concluded within 72 hours following the appearance of the accused in court or if the accused is not found guilty of the crime for which martial law has been proclaimed, the court shall refer the case to the competent prosecutor for action under general procedure.

(2) No appeal shall be permitted from such decisions.

Article 332

(1) Death penalties pronounced in trials under martial law shall generally be executed 3 to 12 hours following pronouncement of the sentence.

(2) The provisions of Articles 335 and 336 shall not apply.

Article 333. Termination of Martial Law

(1) If the reasons for which martial law has been proclaimed no longer exist, the government shall terminate the martial law and announce the termination publicly.

(2) All cases pending at the time of the termination of the martial law and cases where sentence has not been pronounced and where sentence of death have not been executed shall be referred by the court to the prosecutor of competent jurisdiction for proceedings under the general law. Such unexecuted death sentences shall be voided.

## CHAPTER 8. EXECUTION OF SENTENCES

### Article 334. General Provisions

(1) Decisions by investigating authorities and prosecutors shall be executed by the investigating authority or prosecutor making the decision.

(2) Decisions connected with the execution of sentences and measures to prevent evasion of justice, unless otherwise provided, shall be executed by the court of primary jurisdiction deciding the case.

(3) Measures required for the execution of sentences of punishment and measures to prevent evasion of justice and for collection of court costs, especially notification of other authorities and persons competent to collaborate in the execution of the given decision, shall, unless otherwise provided, be taken by the president of the court that decided the case.

(4) Execution of other decisions by courts shall be provided for, unless otherwise directed, by the president of the court.

### Section 1. Execution of Death Sentences

#### Article 335

(1) When a decision imposing a sentence of death is pronounced president of the court of primary jurisdiction which decided the case shall submit the record immediately to the Supreme Court.

(2) In those cases cited in Paragraph 1 the Supreme Court shall review the legality of the decision and the proceedings leading to the decision, and if the Supreme Court finds any violation of the law which could affect the imposition of death penalty, it

shall proceed with the case in the same manner as if appeal on ground of violation of law had been made; otherwise it shall transmit the record to the Ministry of Justice.

#### Article 336

Death sentences shall be executed only after notification by the Ministry of Justice that the decision stands after review by the Supreme Court and that a request for clemency has not been submitted and/or that a request for clemency has been denied.

#### Article 337

(1) If there is no obstacle to the execution of the death sentence, the judge shall, prior to the execution of the sentence, inform the accused that the sentence will be executed and shall read to him the decision without the legal opinion and decision denying any request for clemency.

(2) Death sentences shall not be executed upon pregnant women.

#### Article 338

(1) Death sentences shall be executed in the presence of the judge, the prosecutor, the director of the prison, and a physician.

(2) The witnessing judge shall write the record of the execution of the death sentence, which shall contain the time of death as ascertained by the physician. Record shall be signed by the persons mentioned in Paragraph 1.

## Section 2: Execution of Sentences of Confinement

### Article 339. Place and Manner of Execution of the Sentence

(1) Terms of confinement shall be served in institutions of the Ministry of Interior; in cases pertaining to military personnel on active duty, sentences may be served in military stockades if the term of confinement does not exceed 2 years.

(2) Regulations governing the execution of sentences in institutions of the Ministry of Interior shall be issued by the Minister of Interior in cooperation with the Minister of Justice; regulations governing execution of sentences in military stockades and against military personnel not sentenced to deprivation of military rank shall be issued by the Minister of Defense in agreement with the ministers of Justice and Interior.

(3) The prosecutor in whose district the sentence of confinement is being executed shall have supervision of the execution. The administration of the place of confinement shall be responsible for carrying out the directives of the prosecutor pertaining to regulations governing the execution of the sentence of confinement.

### Article 340. Order to Execute Punishment

If a convicted person is in custody and is serving a sentence imposed by another decision, the president of the court shall direct the administration of the prison in which the convicted is either in custody or serving a period of confinement to execute the confinement.

### Article 341

(1) If the convicted person is not in custody and there is no reason to fear that he will flee, the president of the court may



grant him adequate time to settle his private affairs prior to beginning his term of confinement. This delay shall not, however, exceed 30 days.

(2) If the convicted person does not begin serving his sentence of confinement at the close of the granted time limit, or if there is reason to believe that he may flee, the president of the court shall direct that he be brought to the prison.

#### Article 342. Computation of Period of Custody and Confinement

(1) The president of the court shall rule upon the computation of custody or sentence imposed (Article 23, Criminal Code) generally at the time of ordering the execution of the sentence. Custody shall be computed from the time the accused was apprehended, arrested, or taken into custody or temporary custody.

(2) Decisions under Paragraph 1 may be appealed.

#### Article 343. Time Spent in Curative Institutions

If a convicted person who is serving a sentence of confinement is placed in a curative institution because of mental or physical disease, the time spent in such institution shall be included in computing the period of his confinement.

#### Article 344. Suspension of Sentence

(1) The president of the court shall suspend execution of sentences of confinement for as long as necessary if the life or health of the convicted would be threatened by confinement.

(2) Pregnant women shall be confined only if the confinement is of short duration so that it is improbable that the child be born in confinement or the health of the pregnant woman or expected

child be endangered by confinement; otherwise, the president of the court shall suspend the sentence until 6 months following the birth of the child.

(3) If, however, execution of the sentence would endanger the life or health of a mother or new-born baby, the president of the court shall suspend the sentence for a period not to exceed one year following the birth of the child.

(4) Decisions under Paragraphs 1 through 3 may be appealed, which shall have the effect of suspension.

#### Article 345

(1) Execution of sentences of confinement not exceeding one year may be suspended by the president of the court upon the request of a convicted person who is at large for sufficient cause for a period not to exceed 3 months following the effective date of the sentence. If there is reason to believe that the convicted person might flee or misuse the suspension of sentence, the president of the court shall order the suspension revoked.

(2) Additional suspension of execution of confinement not to exceed one year may be granted by the court for particularly serious reasons, especially if execution would result in extreme hardship for the convicted person or his family for a period of more than 3 months. Such decisions may be appealed.

#### Article 346. Interruption of Execution of Sentences

(1) If a convicted person serving a sentence of confinement becomes seriously ill, the president of the court may grant an interruption of sentence for the required time; the president of

the court shall always grant temporary suspensions in the case of pregnant women where confinement would endanger the health of the woman or of expected or new-born children.

(2) Upon the request of the convicted person the president of court may also, for urgent family reasons or upon the recommendation of the director of the penitentiary or the prosecutor as reward for good work or exemplary behavior, grant a suspension of sentence for a maximum of 15 days one time or repeatedly; such time shall be included in computing the term of the punishment.

(3) Decisions under Paragraphs 1 and 2 shall be made by the president of the people's court in the district in which the sentence is being served. Decisions under Paragraph 1 may be appealed.

#### Article 347. Remission of Sentence

(1) The court may order remission of a sentence of confinement or the unserved portion thereof if the convicted person has been or is to be extradited or exiled.

(2) If the extradition or exile has not been executed or the extradited or exiled person has returned, the term of punishment or the unserved portion thereof shall be executed,

(3) The court may order a remission of a sentence of confinement or the unserved portion thereof if it is ascertained that the convicted person is suffering from incurable serious physical or mental illness.

(4) Decisions under Paragraphs 1 and 3 may be appealed.

Article 348. Suspension and Interruption of Execution of  
Sentences Against Military Personnel

(1) The president of the court shall suspend or interrupt the execution of sentences of confinement not exceeding 6 months if the convicted person is called to active military duty. If the convicted person does not commit any offense during his time of military service and properly fulfilled his military duties, the court shall remit the sentence or the unserved portion thereof; in such cases the sentence shall be considered to have been fully served on the date the suspension or interruption of execution was ordered.

(2) Interruption of execution of sentence under the provisions of Paragraph 1 shall be decided by the president of the people's court in the district in which the sentence is being served. Decisions of remission of execution of sentences under Paragraph 1 may be appealed, which shall have the effect of suspension.

Article 349. Suspension and Interruption of Execution of  
Sentences During a State of National Emergency

During states of national emergency, the president of the court upon the recommendation of the prosecutor may suspend or the president of the kraj court upon the recommendation of the director of the prison or the prosecutor may interrupt the execution of a sentence of confinement; the president of the kraj court shall also decide interruption of execution of a sentence in cases where the sentence has been imposed by a military court.

Article 350. Suspended Sentences

(1) The court shall decide in public session whether to order the execution of suspended sentences if the court decides that a probationer has proved himself, it shall also decide whether any remaining restriction on activity and residence should be executed (Article 27, Paragraph 1, Criminal Code). Such decisions may be appealed which shall have the effect of suspension.

(2) A decision that a probationer's conduct has been satisfactory and that the remainder of the unserved term of punishment of restriction of activity and residence be set aside may be made with the consent of the prosecutor in closed session.

Article 351. Parole

(1) Parole and determination that the remainder of a sentence in the case of man on probation shall be executed shall be decided by the court in public session upon the recommendation of the prosecutor or the director of the prison, upon the request of the convicted person or in the absence of such request; if a request for parole is not granted, it can be resubmitted only after one year from the denial of request, unless the denial was based on the fact that the term provided by law as minimum for parole has not been fulfilled prior to the submission of the request.

(2) Action under the provisions of Paragraph 1 shall be taken by the kraj court and in the sphere of military law by district court where the confinement is executed.

(3) Convicted persons shall be granted a hearing prior to determination of release on parole or a decision that the remainder of sentence of a parole shall be executed.

Article 352. Execution of Sentences of Confinement Imposed for Minor Offenses

The provisions of this section shall apply to the execution of sentences of confinement for minor offenses.

Article 353. Civil Control of Execution of Sentences

Civil control over the execution of sentences of confinement at the places where the sentence is being executed rests with committees composed of members of the National Assembly. Members of such committees shall be entitled to enter at any time places where sentences of confinement are being served and talk with the convicted in privacy without the presence of prison administration officials.

Section 3. Execution of Corrective MeasuresArticle 354. Orders to Execute Sentences

(1) Decisions of courts imposing corrective measure to be carried out without any change in the employment of the convicted person shall be transmitted by the president of the court to the employer of the convicted person together with any provisions required for the execution of the sentence.

(2) If the court orders a change of current employment of the convicted person, the president of the court, in agreement with the appropriate authority of the national administration, shall determine a new employment in compliance with the provisions of the sentence; the president of the court shall inform the new employer of any provisions required for the execution of the corrective measure and at the same time shall notify the present employer of the convicted person. Similar action shall be taken by the president of the court in case of persons having no present employment.

Article 355. Duties of Employers

Employers of convicted persons shall be responsible for notifying the court of all circumstances bearing upon conversion of

corrective measures or the remainder thereof into confinement; they shall be further responsible for withholding and forwarding to the court any money earned by the convicted person and forfeited to the state.

Article 356. Suspension and Interruption of Execution of Sentences

(1) If the convicted person becomes ill to a degree that prevents his fulfilling the employment directed or if the convicted person is a pregnant woman, or for any other serious reasons, the president of the court may suspend or interrupt the execution of corrective measures for an appropriate period. Such decisions may be appealed. The president of the court may in such cases after agreement with the appropriate authority of the national administration assign the convicted person to another employment.

(2) The provisions of Article 348 shall apply to suspension or interruption of execution of corrective measures or remission of sentences in cases where the convicted person is called to military service.

Article 357. Remission of Corrective Measures

(1) If the person sentenced to corrective measure becomes permanently incapacitated prior to the execution of the corrective measure the court shall order a remission of the sentence or the remainder thereof; the same action shall be taken if the person is called to military service. Such decisions may be appealed.

(2) In the case of a remission of sentence to corrective measures or the remainder thereof under the provisions of Paragraph 1, the sentence shall be considered executed on the day of

effectiveness of the decision granting the remission of the corrective measure or the remainder thereof.

Article 358. Conversion of Corrective Measures

(1) Conversion of corrective measures imposed by a court or an executive organ of a national committee and/or conversion of the remainder of such sentences into sentences of confinement shall be made by the court in public session. Such decisions may be appealed which shall have the effect of suspension.

(2) If a corrective measure is imposed by an executive organ of a national committee, the decision of conversion under the provisions of Paragraph 1 shall be made by the competent people's court of the district with jurisdiction over the national committee whose executive organ imposed corrective measure.

Section 4. Execution of Secondary Punishments

Article 359. Execution of Forfeiture of Property

Upon the effective date of a sentence imposing the punishment of complete or partial deprivation of property the president of the court shall furnish a copy of the decision without the justification to the competent organ of the national administration for execution of the punishment.

Article 360.

(1) Where in the course of execution any doubt arises as to certain funds or articles falling under the purview of the decision regarding deprivation of property (Article 47, Paragraph 2, Criminal Code), the president of the court shall decide upon the recommendation of the competent organ of the national administration executing